

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

September 14, 2021

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

ERIKA JACOBS,

Plaintiff - Appellant,

v.

AIMBRIDGE HOSPITALITY (TOWN
PLACE SUITES),

Defendant - Appellee.

No. 21-1074
(D.C. No. 1:20-CV-03746-GPG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, Chief Judge, **KELLY**, and **HOLMES**, Circuit Judges.

Erika Jacobs, proceeding pro se,¹ appeals from the district court’s order denying her request to proceed in forma pauperis (“ifp”) under 28 U.S.C. § 1915(a). Although interlocutory, the court’s ruling is immediately appealable. *See Lister v.*

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ We liberally construe Ms. Jacobs’s pro se filings, but we will not act as her advocate. *See James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

Dep't of Treasury, 408 F.3d 1309, 1310 (10th Cir. 2005). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

BACKGROUND

On December 22, 2020, Ms. Jacobs filed an employment discrimination complaint along with an ifp application to proceed without prepaying fees or costs. The following day, she submitted an amended complaint and an amendment to her ifp application. On December 28, a magistrate judge entered an order directing Ms. Jacobs to cure a deficiency in her ifp application, explaining that she had failed to answer all the questions concerning her financial information and that her case would be dismissed if she did not cure the deficiency within thirty days. The order also noted that Ms. Jacobs should include her case number on future filings and that failure to do so could result in a delay in the consideration of her claims.

On January 12, 2021, Ms. Jacobs filed a response to the magistrate judge's order. She acknowledged she did not answer Question #6 on the ifp application, which required her to list the amount and source of any money that was owed to her. But she said that she did not answer the question "because no one owes [her] any money." R. at 86. In any event, she included a second ifp application that answered Question #6, indicating she was not owed any money from any source. Ms. Jacobs also filed a motion for recusal, accusing the magistrate judge of: (1) being "petty" in delaying the processing of her case by requiring her to answer Question #6 on the ifp application, *id.* at 99; (2) being "very petty and bias[ed]" by insisting that she include her case number on subsequent filings, which she interpreted as "going above and

beyond to find anything to justify the dismissal of [her] case,” *id.*; and (3) failing to supervise the court’s clerks, who she alleged were unprofessional and gave her inaccurate information.

On January 13, the magistrate judge denied the recusal motion, explaining that Ms. Jacobs “fail[ed] to make any reasoned argument that would demonstrate an appearance of [his] partiality and bias.” *Id.* at 119. The magistrate judge also advised Ms. Jacobs that her ifp applications remained deficient because she did not provide a complete response to Question #4. Question #4 asks how much cash the applicant has, and Ms. Jacobs indicated in her ifp applications that she has no cash. However, Question #4 also asks how much money the applicant has in any bank accounts or other financial institutions, with each account to be separately identified and described. Ms. Jacobs left that portion of Question #4 blank on her original ifp application, as amended, and her second ifp application. The magistrate judge directed her to file a third ifp application and warned her that leave to proceed ifp would be denied if she did not cure the deficiency within thirty days.

Ms. Jacobs responded by filing a renewed motion for recusal and a motion asking that her prior motion for recusal be forwarded to another judge. She also filed an objection to the magistrate judge’s order, reiterating that she has no cash and contending no other information was required for Question #4. Ms. Jacobs further stated she would not submit another ifp application. On January 22, the magistrate judge denied the recusal-related motions, noting: (1) the prior motion had been denied, and thus, the request to forward it to another judge was moot; and

(2) Ms. Jacobs still had not offered “any reasoned argument that would demonstrate an appearance of partiality or bias.” *Id.* at 145. The magistrate judge next construed Ms. Jacobs’s objection as a motion for reconsideration and explained that she still had not answered Question #4 to the extent it inquired about funds in bank accounts and other financial institutions. The magistrate judge reminded her that she needed to cure the deficiency if she wanted to proceed ifp. But Ms. Jacobs did not file another ifp application. Accordingly, on February 18, more than thirty days after the magistrate judge’s January 13 order, the district court entered an order denying Ms. Jacobs’s request to proceed ifp and directing her pay the full filing fee within thirty days or else the action would be dismissed. This appeal followed.

DISCUSSION

The sole issue on appeal is whether the district court erred in denying Ms. Jacobs’s request to proceed ifp.² We review the court’s order for an abuse of

² In her brief, Ms. Jacobs also makes conclusory allegations of misconduct by the magistrate judge. But she does not directly raise the denial of her recusal motions as an issue on appeal. *See Burke v. Regalado*, 935 F.3d 960, 1014 (10th Cir. 2019) (noting that “an appellant may waive an issue by inadequately briefing it” and that “[c]ursory statements, without supporting analysis and case law[,] are inadequate to preserve an issue” (internal quotation marks omitted)). In any event, the denial of a motion to recuse is interlocutory and “not immediately appealable.” *Nichols v. Alley*, 71 F.3d 347, 350 (10th Cir. 1995) (per curiam). Such an order is reviewable on appeal from a final judgment. *See, e.g., Higganbotham v. Okla. ex rel. Okla. Transp. Comm’n*, 328 F.3d 638, 640-41, 644-46 (10th Cir. 2003). But the district court did not enter final judgment, as Ms. Jacobs appealed before her deadline to pay the filing fee. She also has not petitioned for a writ of mandamus to contest the denial of her recusal motions. *See Nichols*, 71 F.3d at 350. And even if we construe her appeal as such a petition, *see In re Am. Ready Mix, Inc.*, 14 F.3d 1497, 1499 (10th Cir. 1994), she has not shown the magistrate judge’s “impartiality might reasonably be questioned,” 28 U.S.C. § 455(a).

discretion. *Lister*, 408 F.3d at 1312. Under this standard, we “cannot reverse unless we have a definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances.”

Nalder v. W. Park Hosp., 254 F.3d 1168, 1174 (10th Cir. 2001) (internal quotation marks omitted). Having reviewed the record, we find no abuse of discretion.

As we have explained, IFP status “in a civil case is a privilege, not a right.” *White v. Colorado*, 157 F.3d 1226, 1233 (10th Cir. 1998) (internal quotation marks omitted). A district court “may authorize the commencement” of a case “without prepayment of fees . . . by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees.” 28 U.S.C. § 1915(a)(1).³ “[I]n order to succeed on a motion to proceed IFP, the movant must show a financial inability to pay the required filing fees, as well as the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised in the action.” *Lister*, 408 F.3d at 1312.

The magistrate judge gave Ms. Jacobs multiple opportunities to submit a complete ifp application and twice explained that her answer to the portion of Question #4 regarding bank accounts was incomplete. Ms. Jacobs however refused to submit another ifp application or otherwise provide the missing information. She states on appeal that she answered all of the questions “correctly.” Aplt. Opening Br. at 3, 4. But she does not address the district court’s determination that she failed to

³ Although § 1915(a) refers at times to prisoners, the statute “applies to all persons applying for IFP status.” *Lister*, 408 F.3d at 1312.

answer the portion of Question #4 “regarding funds in bank accounts or any other financial institution” and, therefore, failed to provide complete financial information necessary “to demonstrate she is unable to pay the required filing fees.” R. at 150. *See Nixon v. City & Cnty. of Denver*, 784 F.3d 1364, 1366 (10th Cir. 2015) (“The first task of an appellant is to explain to us why the district court’s decision was wrong.”). Accordingly, Ms. Jacobs has not shown that the district court abused its discretion in denying her request for ifp status. *See Lister*, 408 F.3d at 1313 (finding no abuse of discretion when the plaintiff was “specifically instructed on how to establish indigent status” yet “failed to fill out the proper forms or . . . otherwise provide the district court with the requisite information”).

CONCLUSION

The district court’s order is affirmed. Ms. Jacobs’s motion for leave to proceed on appeal without prepayment of costs or fees is denied due to the lack “of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991).⁴

Entered for the Court

Jerome A. Holmes
Circuit Judge

⁴ Ms. Jacobs did not first file a motion in district court to proceed ifp on appeal, as required by Federal Rule of Appellate Procedure 24(a). *See Boling-Bey v. U.S. Parole Comm’n*, 559 F.3d 1149, 1154 (10th Cir. 2009) (“A motion to proceed ifp on appeal, supported by required documents, must be made in the first instance to the district court. Only if that motion is denied is there occasion to file an ifp motion with this court.” (citation omitted)). Nevertheless, in the interest of expeditious processing of appeals, we will consider her motion to proceed ifp on appeal.