

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 27, 2021

Christopher M. Wolpert
Clerk of Court

TERENCE L. THOMAS,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; A.
BONCHER, Warden; (FNU) ARPANO,
Unit Manager,

Defendants - Appellees.

No. 21-3067
(D.C. No. 5:21-CV-03059-SAC)
(D. Kan.)

ORDER AND JUDGMENT*

Before **MORITZ, BALDOCK, and EID**, Circuit Judges.**

Plaintiff-appellant Terence L. Thomas is an inmate at Federal Medical Center–Devens (“FMC–Devens”) in Massachusetts. Appearing pro se, he brought suit in the U.S. District Court for the District of Kansas against the defendants-appellees—the United States of America; A. Boncher, the Warden of FMC–Devens; and FNU Arpano, a Unit Manager at FMC–Devens—alleging that they unlawfully (1) limited

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

** 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.

his access to the FMC–Devens law library and (2) failed to replace his housing unit’s broken microwave. He also sought “the relief of [his] letters to the Court granted as reserved as well as the thought, Ideas, Expressions, title markers and place names of [himself],” maintaining that he was entitled to such relief under the First Amendment. R. at 9; *see also* Aplt. Br. at 2 (“I asked my rights to be reserved . . . because I believe my First [Amendment] right would be violated.”). After reviewing the complaint, the district court dismissed Thomas’s case for lack of venue, reasoning that “the District of Kansas is not a proper venue for this action because no defendant resides in the District of Kansas, nor did any of the events giving rise to the claim occur in the District of Kansas.” *Thomas v. United States*, No. 21-3059-SAC, 2021 WL 1210277, at *1 (D. Kan. Mar. 31, 2021).

On appeal, Thomas continues to press his claims concerning his limited library access, his housing unit’s broken microwave, and his desire to “reserve” his rights. Additionally, he attempts to inject new matters into this suit, alleging (1) that the defendants-appellees are forcing him to take medication in violation of the Eighth Amendment and (2) that a United States marshal who is biased against him improperly influenced court officials at the time of his sentencing, causing him to receive a lengthier term of imprisonment than would have otherwise been imposed. Thomas does not, however, challenge the district court’s determination that venue was improper in the District of Kansas. As a result, he has waived the issue that was the basis for the district court’s ruling. *See Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020). In light of Thomas’s waiver, we affirm the dismissal of Thomas’s

suit without prejudice for lack of venue. And because the venue issue is dispositive, we do not address the merits of Thomas’s claims. *See Ballard v. Anderson*, --- F. App’x ----, No. 21-4017, 2021 WL 2623156, at *2 (10th Cir. June 25, 2021) (unpublished) (explaining that when we affirm for lack of venue, we “need not expend effort considering the other aspects of the district court’s decision”).¹

Also pending before us is Thomas’s motion for leave to proceed *in forma pauperis* (“*ifp*”) for purposes of this appeal. An appellant wishing to proceed *ifp* must show not just “a financial inability to pay the required [filing] fees”; in addition, he must demonstrate “the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *Watkins v. Leyba*, 543 F.3d 624, 627 (10th Cir. 2008) (alteration in original) (quotations omitted) (quoting *McIntosh v. U.S. Parole Comm’n*, 115 F.3d 809, 812 (10th Cir. 1997)). By not challenging the basis for the district court’s decision, Thomas has failed to satisfy this latter requirement. *See Ballard*, 2021 WL 2623156, at *2. Accordingly, we deny Thomas’s *ifp* motion and order him “to immediately pay the full amount of all remaining appellate filing and docketing fees.” *Robinson v. Doe*, 761 F. App’x 855, 857 (10th Cir. 2019) (unpublished).

For the foregoing reasons, we AFFIRM the judgment of the district court dismissing the case without prejudice for improper venue. We further DENY

¹ Unpublished cases cited in this decision are not binding precedent, but we consider them for their persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Thomas's *ifp* motion and DIRECT him to pay the entire amount of the filing and docketing fees forthwith.

Entered for the Court

Allison H. Eid
Circuit Judge