

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 4, 2023

Christopher M. Wolpert
Clerk of Court

ARTHUR BURNHAM,

Plaintiff - Appellant,

v.

THE UNITED STATES; STATE OF
COLORADO; GORDON P.
GALLAGHER; NURSE GONZALES,

Defendants - Appellees.

No. 22-1436
(D.C. No. 1:22-CV-02719-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **McHUGH**, and **CARSON**, Circuit Judges.

Arthur Burnham, a state prisoner appearing pro se, appeals from the district court’s dismissal of the civil rights complaint he filed pursuant to 42 U.S.C. § 1983. The district court dismissed his suit without prejudice because he failed to submit a certified copy of his inmate trust fund account as ordered by the court. Exercising

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

jurisdiction under 28 U.S.C. § 1291, we affirm the district court's dismissal but grant Plaintiff's request to proceed *in forma pauperis*.

I.

On October 14, 2022, Plaintiff filed a pro se complaint alleging various civil rights violations and a request to proceed *in forma pauperis*. Ten days later, the district court ordered Plaintiff to cure deficiencies in his *in forma pauperis* request by either providing a certified copy of his trust fund statement or, if he could not obtain a statement, submitting to the court a detailed affidavit of: (1) the facility's procedure for an inmate to obtain a certified account statement, (2) the efforts Plaintiff took to comply with that procedure, and (3) an explanation of how detention facility officials (who must be identified) have refused to provide the statement. The order to cure deficiencies expired without any response from Plaintiff, and the district court dismissed the action without prejudice.

II.

Federal Rule of Civil Procedure 41(b) permits a district court to dismiss an action for failure to comply with a court order. We review the district court's dismissal for abuse of discretion. See Mobley v. McCormick, 40 F.3d 337, 340 (10th Cir. 1994) (treating an order of dismissal as a Rule 41(b) involuntary dismissal and reviewing for abuse of discretion).

III.

District courts have broad discretion in determining whether to dismiss a civil action without prejudice for failing to comply with court orders. See Fed. R. Civ. P. 41(b); 8 James Wm. Moore et al., Moore’s Federal Practice ¶ 41.53 (3d ed. 2007) (“When the dismissal is without prejudice, an abuse of discretion will generally not be found, because the plaintiff may simply refile the suit.”). “[D]ismissal is an appropriate disposition against a party who disregards court orders and fails to proceed as required by court rules.” United States ex rel. Jimenez v. Health Net, Inc., 400 F.3d 853, 855 (10th Cir. 2005) (citing Nat’l Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 642–43 (1976)).

Plaintiff claims that the Clerk of Court failed to mail him a necessary form, which he calls a “1915 (d) form.” We know of no such form, and the order to cure deficiencies did not require a form from Plaintiff. The order required either a certified copy of his inmate trust fund statement or an affidavit describing the procedure for getting a certified copy and an explanation of why he could not get it. The district court ordered Plaintiff to cure deficiencies and gave him 30 days to respond. Plaintiff did not respond. So the district court dismissed the case without prejudice pursuant to the Rule 41(b). That dismissal was not an abuse of discretion.

We are not unsympathetic to Plaintiff’s claims. If, as Plaintiff alleges, he was “locked . . . in a cell 24 hours a day and refused access to law clerk or envelopes,” this could have interfered with Plaintiff’s ability to prosecute. But, at this stage, our

role is to review the district court's dismissal for an abuse of discretion, not to review the conduct of the prison officials.

We will, however, grant Plaintiff's *in forma pauperis* request, as he showed the existence of a reasoned, nonfrivolous argument on the facts in support of the issue he raised on appeal. See DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991) (citing 28 U.S.C. § 1915(a)). And we note that Plaintiff submitted a proper *in forma pauperis* request in this appeal, including the trust fund statement he was missing at the district court. This fact gives us confidence that should Plaintiff decide to refile the suit, he will have access to the necessary resources. We therefore grant Plaintiff's request to proceed *in forma pauperis* but AFFIRM the district court's dismissal.

Entered for the Court

Joel M. Carson III
Circuit Judge