

UNITED STATES COURT OF APPEALS

Filed 1/3/96

TENTH CIRCUIT

KENNETH LEE DERRING,
Plaintiff - Appellant,

v.

CLAY FORD, Patrolman,
Defendant - Appellee.

No. 95-3159

D. Kansas

(D.C. No. 95-CV-3197-DES)

KENNETH LEE DERRING,
Plaintiff - Appellant,

v.

DALE E. SAFFELS, District Judge,
Defendant - Appellee.

No. 95-3232

D. Kansas

(D.C. No. 95-CV-3258-RDR)

ORDER AND JUDGMENT*

Before **ANDERSON, BARRETT, and LOGAN**, Circuit Judges.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the court's General Order filed November 29, 1993. 151 F.R.D. 470.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. This cause is therefore ordered submitted without oral argument.

These matters are before the court on appellant's motion for leave to proceed on appeal without prepayment of costs or fees. To succeed the appellant must show both a financial inability to pay the required filing fees, and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal. See 28 U.S.C. § 1915(a); Coppedge v. United States, 369 U.S. 438 (1962); Regan v. Cox, 305 F.2d 58 (10th Cir. 1962).

Appeal No. 95-3159 relates to the district court's dismissal of appellant's civil rights action against Patrolman Clay Ford, a resident of Mississippi County, Arkansas. In that action the appellant, a maximum security inmate at Tucker, Arkansas, claims that in 1983 Ford unlawfully transported him from custody in Kansas to state custody in Pine Bluff, Arkansas. For relief, the appellant's complaint in this civil lawsuit asks that the federal court imprison Patrolman Ford for life on "count 1," and for 5 years on "count 2"; further, that he court fine Ford and pay a "reward" to the appellant. The complaint acknowledges several previous suits raising identical issues against other parties.

The district court dismissed under 28 U.S.C. § 1915(d), stating that the complaint contained no arguable basis in law for five reasons: (1) the court's lack of personal

jurisdiction over the defendant; (2) the court's inability to grant the relief sought; (3) collateral estoppel resulting from prior, unsuccessful litigation of the claims raised; (4) the complaint clearly shows that the action is barred by the statute of limitations; and, (5) in any event, exhibits to the complaint show that the complaint's central allegations regarding his release to an allegedly unlawful detainer, are not true.

Appellant contests reasons (1) and (5), but makes no reasoned argument as to the other grounds. Our review of the record discloses no arguable basis for this complaint due to those other reasons.

Appeal No. 95-3232 relates to the district court's dismissal of appellant's civil rights action against Federal District Judge Dale E. Saffels. Appellant contends in that action that Judge Saffels wrongfully dismissed the action referred to above (No. 95-3159), wrongfully blocked service of summons, dissuaded the appellant "from causing a criminal prosecution," and made false and misleading statements in his order. The relief sought in the complaint is imprisonment of Judge Saffels for ten years and a \$250,000 fine, plus a "reward" of \$100,000 to the plaintiff.

District Judge Richard D. Rogers dismissed the complaint under 28 U.S.C. § 1915(d), because Judge Saffels is absolutely immune from such suits. See Stump v. Sparkman, 435 U.S. 349, 362-64 (1978). Judge Rogers also denied the appellant's recusal motion. For the reasons stated by the district court, we agree that the appellant's action is legally frivolous; and no basis exists in law for the recusal of Judge Rogers.

In both of the actions referred to above the district court found that the appellant's appeals to this court were not taken in good faith, and denied appellant leave to proceed on appeal in forma pauperis. 28 U.S.C. § 1915(a). We conclude that the appellant neither has nor can make a rational argument on appeal, within the requirements set forth above, as to either of the cases referenced above. Therefore, the motion in both appeals for leave to proceed without prepayment of costs or fees is DENIED. Both appeals, No. 95-3159 and No. 95-3232 are DISMISSED. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge