FILED
United States Court of Appeals
Tenth Circuit

July 9, 2024

Christopher M. Wolpert
Clerk of Court

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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BRITTANY CROWNHART,

Plaintiff - Appellant,

v.

PEOPLE OF THE STATE OF COLORADO; AURORA POLICE DEPT.; MESA COUNTY COLORADO COURT; Judge GURLEY,

Defendants - Appellees.

No. 24-1208
(D.C. No. 1:24-CV-00391-LTB)
(D. Colo.)

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**ORDER AND JUDGMENT***

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Before **MATHESON**, **BACHARACH**, and **McHUGH**, Circuit Judges.

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Appellant Brittany Crownhart, proceeding pro se,[1] appeals the district court's dismissal of her civil action for lack of subject matter jurisdiction. In addition, Ms. Crownhart moves this court (1) for an order permitting her to proceed in forma

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* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

[1] Because Ms. Crownhart is proceeding pro se, "we liberally construe h[er] filings, but we will not act as h[er] advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

pauperis ("IFP") on appeal, and (2) for an order reversing a Colorado state court decision under the United States Constitution and a litany of federal and Colorado statutes.

Because even the most generous interpretation of Ms. Crownhart's operative complaint makes clear that her causes of action cannot be filed in federal court, we affirm the district court's dismissal order. We further (1) deny Ms. Crownhart's IFP motion because we can find no reasoned, non-frivolous argument in support of her appeal, (2) deny as moot her motion to directly reverse a Colorado state court decision in light of our jurisdictional determination in this appeal, and (3) deny her motion for summary judgment as frivolous.

## I. BACKGROUND

Ms. Crownhart initiated this action—the sixteenth pro se action she had filed since May 2020—in February 2024. Less than two weeks later, the district court issued an order directing Ms. Crownhart to (1) cure deficiencies in her initial complaint, and (2) show cause why a limited filing restriction should not be imposed in light of her "lengthy and abusive filing history."[2] ROA at 74. The district court's proposed filing restriction applied only to pro se actions filed by Ms. Crownhart, and

[2] Specifically, before the instant action, Ms. Crownhart had filed fifteen civil actions, all but one of which were dismissed for one or multiple of the following reasons: (1) failure to cure deficiencies, (2) failure comply with the local rules, (3) failure to prosecute, (4) failure to effect service on defendants, and (5) failure to pay the filing fee.

it provided a clear procedure by which she could obtain leave of court to file such an action.

Ms. Crownhart responded to the district court's order with a flurry of filings, including three putative complaints. The district court again ordered Ms. Crownhart to cure deficiencies, and on April 3, 2024, Ms. Crownhart filed the operative complaint, which seeks relief from a Colorado state court's custody determination regarding Ms. Crownhart's infant son.

One month later, the district court issued an order (1) sua sponte analyzing whether the operative complaint—liberally construed—established federal subject matter jurisdiction, concluding it did not, and thus dismissing the action without prejudice, (2) certifying, under 28 U.S.C. § 1915(a)(3), that any appeal from the dismissal order would not be taken in good faith and therefore denying IFP status for any such appeal, and (3) imposing the filing restriction of which the district court provided Ms. Crownhart notice and an opportunity to respond more than two months prior.[3]

[3] On appeal, Ms. Crownhart does not refer at all to the district court's filing restriction much less argue that the court erred by imposing the same, and our own review confirms the propriety of the court's limited filing restriction. *See Tripati v. Beaman*, 878 F.2d 351, 353–54 (10th Cir. 1989) (holding that filing restrictions are appropriate where the district court (1) sets forth the litigant's "abusive and lengthy" litigation history, (2) details "guidelines as to what plaintiff must do to obtain the court's permission to file an action," and (3) provides the litigant with "notice and an opportunity to oppose the court's order before it is instituted").

We pause to urge Ms. Crownhart to seek the assistance of the "pro se clinic"—whose information was provided to her by the District of Colorado in earlier-filed actions—before she attempts to file any future suit in federal court; Ms. Crownhart's

Ms. Crownhart thereafter timely noticed this appeal and moved to proceed IFP on appeal.

## II. ANALYSIS

On appeal, Ms. Crownhart does not make any reasoned argument that the district court's jurisdictional decision was wrong, and our de novo review of the same reveals that the district court properly dismissed this action for lack of subject matter jurisdiction. *See Butler v. Kempthorne*, 532 F.3d 1108, 1110 (10th Cir. 2008) ("We review de novo a dismissal for lack of subject matter jurisdiction . . . .").

Aside from unelaborated assertions that the district court "[v]iolated" the Fourteenth Amendment's Due Process clause by dismissing the action, Ms. Crownhart's briefing on appeal consists exclusively of arguments related to the merits of her complaint. Appellant's Br. at 2, 4. But neither this court nor the district court may reach the merits of an action where it appears that such case fails to establish subject matter jurisdiction. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (explaining that a determination of "subject-matter jurisdiction necessarily precedes a ruling on the merits"). And, as the district court noted, subject matter jurisdiction "must be policed by the courts on their own initiative." *Id.* at 583.

Ms. Crownhart's operative complaint expressly invoked federal question jurisdiction pursuant to 28 U.S.C. § 1331, asserting one claim titled "Illegal Fraud By

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use of this and/or other no- or low-fee assistance will ensure the greatest likelihood of compliance with the district court's limited filing restriction order. *See Crownhart v. Collins*, 860 F. App'x 554, 555 (10th Cir. 2021) (unpublished).

Social Security Act [of] 1935" under 18 U.S.C. § 1341, "To Include [Colo. Rev. Stat.] § 19-3-205." ROA at 221. But 18 U.S.C. § 1341 is the federal statute criminalizing mail fraud and, as the district court correctly concluded, may not be enforced in a civil action by a private party. Federal criminal statutes that "do not provide for a private right of action" are "not enforceable through a civil action," and nothing in § 1341 can be read as creating a private cause of action. *See Andrews v. Heaton*, 483 F.3d 1070, 1076 (10th Cir. 2007).

Because § 1341 is the only federal law Ms. Crownhart invoked, her complaint did not establish federal question jurisdiction and the district court properly concluded as much.[4] *See Greene v. Tennessee Bd. of Jud. Conduct*, 693 F. App'x 782, 783 (10th Cir. 2017) (unpublished)[5] ("The district court appropriately dismissed [case] for lack of subject matter jurisdiction. . . . [where plaintiff's] asserted basis for federal question jurisdiction is 18 U.S.C. § 1001, which is a criminal statute that does not confer jurisdiction in this civil lawsuit."); *Brown v Progressive Specialty Ins. Co.*,

[4] Ms. Crownhart did "not assert diversity jurisdiction in her [operative] pleading," and we agree with the district court that even if she had nominally invoked the same, her complaint "indicates that all parties are citizens of Colorado" and diversity jurisdiction is thus not satisfied. ROA at 263; *see* 28 U.S.C. § 1332.

Because we affirm the district court's dismissal for lack of subject matter jurisdiction, we need not and do not reach its alternative basis for dismissal—that the *Rooker-Feldman* doctrine required the court to abstain from entertaining the action "to the extent that [Ms. Crownhart] request[ed] a reversal of a state child custody determination." ROA at 263.

[5] We cite unpublished cases for their persuasive value only and do not treat them as binding authority. *See United States v. Ellis*, 23 F.4th 1228, 1238 n.6 (10th Cir. 2022).

763 F. App'x 146, 147 (3d Cir. 2019) (unpublished) ("[F]ederal question jurisdiction [can]not be premised on . . . alleged violations of criminal statutes [that] neither authorize civil actions nor create civil liabilities."); *Robinson v. Pulaski Tech. Coll.*, 698 F. App'x 859, 859 (8th Cir. 2017) (unpublished) (plaintiff asserting civil claims under "federal criminal statutes" "did not assert a valid basis for federal question jurisdiction"); *Deasy v. Louisville & Jefferson Cnty. Met. Sewer Dist.*, 47 F. App'x 726, 728 (6th Cir. 2002) (unpublished) (concluding that civil complaint asserting violation of federal criminal mail fraud statute did not establish federal question jurisdiction).

We now turn to the motions Ms. Crownhart filed in this court and (1) deny her motion to proceed IFP because she has not presented "a reasoned, nonfrivolous argument on the law and facts," *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991); (2) deny as moot her motion to reverse a Colorado state court decision; and (3) deny her motion for summary judgment as frivolous because there exists no summary judgment procedure on appeal.

## III. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's order dismissing this action without prejudice and imposing a limited filing restriction on Ms. Crownhart. We further DENY all pending motions filed in this court.

Entered for the Court

Carolyn B. McHugh
Circuit Judge