

January 22, 2010

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

TRIGINAL D. JACKSON,

Plaintiff - Appellant,

v.

WALGREENS CORP.; MS. FALLAS;
3 CLERKS; 3 MANAGERS,

Defendants - Appellees.

No. 09-2159

(D. New Mexico)

(D.C. No. 09-CV-00286-BB-DJS)

ORDER AND JUDGMENT*

Before **HARTZ, SEYMOUR,** and **ANDERSON,** Circuit Judges.

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.

Triginal Jackson, pro se, seeks leave to proceed in forma pauperis to appeal the district court's dismissal, for failure to state a claim on which relief can be

*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

granted, of his civil rights complaint against Walgreens Corp.,¹ and various of its employees. Mr. Jackson filed his complaint on a form for 42 U.S.C. § 1983 actions, but his allegations also assert claims of discrimination.

According to the complaint, employees at two out of three Walgreens stores that Mr. Jackson visited in New Mexico refused to sell him alcohol due to what they considered to be an unacceptable form of identification issued in Utah. No other basis for the refusal is articulated.

The district court dismissed the complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) because, for § 1983 purposes, the defendants were not state actors, and, to the extent that the complaint invokes statutes prohibiting discrimination, there is no federal law preventing a private business from refusing to sell alcohol under these circumstances.

Applying the usual liberal standard to our reading of the complaint, and de novo review of the district court's decision, see Kay v. Bemis, 500 F.3d 1214, 1217-18 (10th Cir. 2007), we agree with the district court. Accordingly, for substantially the reasons stated in the district court's Opinion dated April 8, 2009,

¹The official name appears to be Walgreen Co.

and Orders dated April 15, 2009, and August 20, 2009, we deny leave for Mr. Jackson to proceed ifp, and dismiss this appeal for failure to state a claim upon which relief can be granted.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge