

February 13, 2013

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

KELLY S. MCENTIRE,

Plaintiff - Appellant,

v.

FEDERATED INVESTMENT
MANAGEMENT; BANK OF UTAH;
ROBERT NEWMAN; AMERICA
FIRST CREDIT UNION; WEBER
CREDIT UNION; JAMES
SELANDER,

Defendants - Appellees.

No. 12-4206
(D. Utah)

(D.C. No. 2:12-CV-00375-DB)

ORDER AND JUDGMENT*

Before **HARTZ, O'BRIEN**, and **GORSUCH**, Circuit Judges.

Under 28 U.S.C. § 1915(e)(2)(B)(i) the district court may dismiss a case filed by a plaintiff proceeding *in forma pauperis* if the complaint is “frivolous.”

*After examining the briefs and appellate record, this panel has determined unanimously to honor the party’s request for a decision on the brief without oral argument. *See* Fed. R. App. P. 34(f); 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 This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

“[A] court may dismiss a claim as factually frivolous only if the facts alleged are ‘clearly baseless,’ a category encompassing allegations that are ‘fanciful,’ ‘fantastic,’ and ‘delusional.’ As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible” *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992) (citations and internal quotation marks omitted). It is not enough that the factual allegations be unlikely, “for truth is always strange, Stranger than fiction.” *Id.* at 33 (internal quotation marks omitted). The court must therefore be cautious, even understanding, before invoking this ground for dismissal.

In this case, Magistrate Judge Evelyn J. Furse displayed such caution and understanding. Faced with a, to say the least, confusing complaint filed by plaintiff Kelly McEntire, who was proceeding *in forma pauperis*, Judge Furse set a hearing at which Mr. McEntire could clarify his allegations. Only after conducting the hearing did the judge conclude, quite properly, that the case was factually frivolous. Judge Furse’s report and recommendation proposed dismissal of the case as frivolous, and the district court adopted the recommendation.

For the reasons stated in the report and recommendation, we AFFIRM the judgment below. We DENY Mr. McEntire's request to proceed *in forma pauperis*.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge