

June 11, 2013

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

FABIAN TINNER,

Plaintiff - Appellant,

v.

WILLIAM COFFEE, District Court of  
Johnson County Hearing Officer; JERI  
DOYLE, District Court of Johnson  
County Div. 9 Administrator;  
JENNIFER HAGG, District Court of  
Johnson County Deputy Trustee; AMY  
MITCHELL, Attorney; JASON P.  
OLDHAM, Clerk of Kansas Court of  
Appeals; (FNU) DUNN-  
GYLLENBORG, District Court of  
Johnson County Kansas Judge,

Defendants - Appellees.

No. 13-3055 and 13-3068  
(D.C. No. 2:12-CV-02751-EFM-GLR)  
(D. Kan.)

ORDER AND JUDGMENT\*

Before **KELLY, HOLMES**, and **MATHESON**, Circuit Judges.\*\*

\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

\*\* After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The cause is therefore ordered submitted without oral argument.

Plaintiff-Appellant Fabian Tinner, proceeding pro se, appeals from the district court's order dismissing his complaint. Mr. Tinner alleged various constitutional violations during child support proceedings, naming several Kansas state court personnel as defendants. The district court dismissed the case because the factual predicate was similar to a prior case Mr. Tinner filed against similar defendants. Mr. Tinner also filed a motion to amend the complaint with his first notice of appeal in this case. The district court denied the motion because it lacked jurisdiction to decide it. Mr. Tinner appeals both orders.<sup>1</sup> Exercising jurisdiction pursuant to 28 U.S.C. §1291, we affirm.

Mr. Tinner filed the present complaint in November 2012, asserting multiple claims against multiple defendants. It looked remarkably similar to a prior complaint which the court dismissed in April 2012 for a variety of reasons, including lack of jurisdiction, abstention, judicial immunity, and the failure to state a claim. See Tinner v. Foster, No. 11-2695-EFM-KGG, 2012 WL 1473417 (D. Kan. Apr. 27, 2012), appeal dismissed, 491 F. App'x 936 (10th Cir. 2012). In December, the court ordered Mr. Tinner to show cause why the action should not be dismissed pursuant to Fed. R. Civ. P. 12(h)(3) or 28 U.S.C. § 1915(e)(2)(B). Mr. Tinner filed a response, but the district court was not persuaded. Therefore,

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<sup>1</sup> We also note that Mr. Tinner unsuccessfully sought to remove the state court action to federal court. See Blaylock v. Tinner, No. 13-2045-EFM, 2013 WL 1491207, at \*1 (D. Kan. Apr. 11, 2013).

the district court properly dismissed the matter. Because Mr. Tinner appealed that order while simultaneously attempting to revise his complaint, the district court also properly denied his motion to amend. See Fed. R. Civ. P. 62.1(a)(2); see also Combs v. PriceWaterhouse Coopers LLP, 382 F.3d 1196, 1204–05 (10th Cir. 2004).

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge