

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

June 9, 2014

Elisabeth A. Shumaker
Clerk of Court

BILL GUINN,

Plaintiff - Appellant,

v.

THE COLORADO ATTORNEY
REGULATION COUNSEL,

Defendant - Appellee.

No. 13-1529
(D.C. No. 1:13-CV-02538-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ, MCKAY, and MATHESON**, Circuit Judges.

On September 16, 2013, Plaintiff Bill Guinn, proceeding pro se, filed in the United States District Court for the District of Colorado, a civil complaint and a motion to proceed *in forma pauperis* (IFP). The magistrate judge instructed Plaintiff that his case

*After examining the briefs and the 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)(2) and 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

would be dismissed unless he filed his complaint and motion on court-approved forms. Plaintiff refiled his complaint and motion on adequate forms but failed to sign and date his motion. Perhaps the case could properly have been dismissed on that ground; but on October 18 the magistrate judge gave Plaintiff another chance, instructing him to provide a signed and dated motion within 30 days. When Plaintiff did not comply, his action was dismissed without prejudice. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm that dismissal.

“We review for abuse of discretion a district court’s dismissal for failure to comply with a court order.” *Cosby v. Meadors*, 351 F.3d 1324, 1326 (10th Cir. 2003). Plaintiff’s unsworn brief on appeal asserts that he never received the October 18 order in the mail because the “postal service employees mistakenly misplaced” it. Aplt. Br. at 12. But the record reflects that the October 18 order was mailed to him, and Plaintiff offers no evidence to counter the inference that he received it. *See Ghana v. Story*, 98 F.3d 1349, *1 (10th Cir. 1996) (unpublished table decision). Further, the appropriate way for Plaintiff to raise a question of fact about whether he received the order would be to file a motion in the district court, as in *Brown v. Beck*, 203 F. App’x 907, 909–10 (10th Cir. 2006), and *Nixon v. Brooks*, 242 F.3d 389, *1 (10th Cir. 2000) (unpublished table decision). *See Mahmoudi v. INS*, 986 F.2d 1428, *2 (10th Cir. 1993) (unpublished table decision) (appellant’s argument that he did not receive his mail, supported by material outside the record, cannot be considered for the first time on appeal). The district court did not abuse its discretion when it dismissed Plaintiff’s claim without prejudice.

We AFFIRM the district court's order. We DENY Defendant's motion to proceed *in forma pauperis*.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge