

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

January 17, 2018

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

ROCKY-LEE: HUTSON,

Petitioner - Appellant,

v.

THE UNITED STATES OF AMERICA
JUDICIAL SYSTEM (COURT),

Respondent - Appellees.

No. 17-1441
(D.C. No. 1:17-CV-02062-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MATHESON, KELLY, and MURPHY**, Circuit Judges.

Rocky-Lee: Hutson sued the “United States of America Judicial System.” The district court dismissed his complaint without prejudice because Mr. Hutson failed to comply with the magistrate judge’s order to cure deficiencies in his filings. Mr. Hutson,

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

appearing pro se,¹ appeals. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm. We also deny Mr. Hutson's motion to proceed *in forma pauperis* (“*ifp*”).

I. BACKGROUND

On August 28, 2017, Mr. Hutson filed his complaint, alleging bias and misconduct on the part of the magistrate judge who presided over his civil rights case. This suit was assigned to another magistrate judge, who on September 5, 2017, ordered Mr. Hutson to (1) file a complaint on the proper form, and (2) pay the \$400.00 filing fee or submit an *ifp* application. The order warned Mr. Hutson that failure to cure the deficiencies within 30 days would result in dismissal of his action.

On October 6, 2017, Mr. Hutson filed a “Motion to Cure Deficiencies,” stating he should not be required to comply with the order. Because he did not cure the deficiencies within the time allowed, the district court dismissed the case without prejudice and entered judgment. It also denied Mr. Hutson leave to proceed *ifp* on appeal, stating that an appeal would not be taken in good faith.

II. DISCUSSION

We review a district court's dismissal of a case for failure to comply with orders for abuse of discretion. *See AdvantEdge Bus. Grp., L.L.C. v. Thomas E. Mestmaker & Assocs., Inc.*, 552 F.3d 1233, 1236 (10th Cir. 2009). We affirm the district court. Mr. Hutson fails to explain his failure to comply with the order to

¹ Because Mr. Hutson is pro se, we liberally construe his filings but do not act as his advocate. *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

correct deficiencies in his complaint. The arguments in his brief otherwise lack merit.

First, Mr. Hutson contends he need not comply with the district court order “because [he is] indigent [sic] and could not pay the fee.” Aplt. Br. at 2. The magistrate judge instructed Mr. Hutson that he must submit an application to proceed *ifp*. But rather than file the application, Mr. Hutson instead said in his October 6 filing that “[n]o state shall convert secured liberties into privileges and issue a license and a fee for it.”² ROA at 14. He argued the Supreme Court has determined that petitioning the federal government is a “liberty” and thus the district court, in requiring the fee, was “undermin[ing]” the Court. *Id.* at 15. He makes a similar argument on appeal but presents no legal or factual support for it.

Second, Mr. Hutson also offers no legal or factual support for his argument that the district court dismissed his case because it “did not want to hold the officers of their District accountable for violating the law.” Aplt. Br. at 2.

Because Mr. Hutson has not shown that the district court abused its discretion, we affirm the dismissal of his complaint.

² He cited *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), but *Murdock* does not contain this quoted sentence.

III. CONCLUSION

We affirm the district court's judgment and deny Mr. Hutson's application to proceed *ifp*.

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge