

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

May 31, 2005

PATRICK FISHER
Clerk

KAREN MARIE KLINE,

Plaintiff-Appellant,

v.

JAMES HALL, Judge; ART
ENCINIAS, former judge; FIRST
JUDICIAL; FIRST JUDICIAL
DISTRICT COURT CLERK; NEW
MEXICO COURT OF APPEALS,

Defendants-Appellees.

No. 04-2182
(D.C. No. CIV-04-309 ACT/DJS)
(D. N.M.)

ORDER AND JUDGMENT *

Before **HENRY** , **BRISCOE** , and **MURPHY** , Circuit Judges.

After examining the briefs and 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); 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Plaintiff Karen Marie Kline, proceeding *pro se*, appeals the district court's order dismissing her action alleging that defendants, who are individuals and entities connected with the New Mexico judicial system, made it difficult for her to litigate her *pro se* state civil actions. Ms. Kline argues that the district court erred by (1) wrongly determining that she failed to state a claim under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-34; and (2) unfairly denying leave to amend so that she could clarify her ADA claim. ¹

We review the district court's order of dismissal *de novo*, taking all facts alleged in the complaint as true and indulging all reasonable inferences in favor of plaintiff. *Curley v. Perry*, 246 F.3d 1278, 1281 (10th Cir. 2001) "We further construe a *pro se* complaint liberally." *Id.* The law to be applied to Ms. Kline's appeal is set out in *Tennessee v. Lane*, 124 S. Ct. 1978, 1994 (2004), in which the Supreme Court held that Title II of the ADA, as it "applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' power to enforce the guarantees of the Fourteenth Amendment."

This court has examined the briefs, the record, and the applicable law. We acknowledge Ms. Kline's contention that she has a memory deficit and an

¹ On appeal, plaintiff does not contest the district court's dismissal of her civil-rights claims against Judge Encinias and Judge Hall, based on the doctrine of judicial immunity.

information-processing disorder which hamper her pursuit of *pro se* litigation. Like the district court, however, we conclude that her allegations do not “suggest that [defendants] have denied her access to the judicial system because of her disability.” R., doc. 21 at 8 (citing *Tennessee v. Lane* , 124 S. Ct. at 1980-83, 1992-93).

As for the denial of leave to amend the complaint, we review the district court’s order for an abuse of discretion. *Wessel v. City of Albuquerque* , 299 F.3d 1186, 1196-97 (10th Cir. 2002). Ms. Kline notes that *Tennessee v. Lane* was announced after defendants’ dismissal motion was at issue and states that, in light of this timing, she should have been permitted to elaborate upon her claims and discuss the effect of that decision. The district court’s order of dismissal, however, carefully analyzed plaintiff’s claims under the principles enunciated in *Tennessee v. Lane*. Under the circumstances, the district court did not abuse its discretion in denying the motion to amend. *See Curley*, 246 F.3d at 1281-82 (holding dismissal of *pro se* complaint proper where it is obvious plaintiff cannot prevail on the facts alleged and it would be futile to provide an opportunity to amend).

We therefore AFFIRM the judgment of the district court for substantially the same reasons stated by the district court in its orders filed May 19, 2004 and

June 3, 2004. Ms. Kline's motion to proceed *in forma pauperis* on appeal is
GRANTED.

Entered for the Court

Michael R. Murphy
Circuit Judge