

UNITED STATES COURT OF APPEALS

Filed 10/4/96

TENTH CIRCUIT

JERRY THOMPSON,)
)
 Plaintiff-Appellant,)
)
 vs.)
)
 STEVE MILLS, JOEL KNOWLES,)
 LEANN LARIVA, JOHN LEE, and)
 R. LARIVA,)
)
 Defendants-Appellees.)

No. 96-1213
 (D.C. No. 96-S-611)
 (D. Colo.)

ORDER AND JUDGMENT*

Before TACHA, BALDOCK, and BRISCOE, Circuit Judges.**

On May 1, 1996, the district court dismissed Plaintiff Jerry Thompson's civil rights complaint for want of prosecution and as legally frivolous. On May 10, 1996, Plaintiff Jerry Thompson, appearing pro se, filed a Notice of Appeal together with a Motion for Leave to Proceed on Appeal In Forma Pauperis. Pursuant to 28 U.S.C. § 1915 as

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** 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); 10th Cir. R. 34.1.9. The case therefore is ordered submitted without oral argument.

amended by the Prison Litigation Reform Act of 1995, Pub. L. No. 104-34, § 804, 110 Stat. 1321 (effective April 26, 1996), the district court certified that the appeal was not taken in good faith and denied the motion. See 28 U.S.C. § 1915(a)(3).

Both the former subsection (d), and the newly enacted subsection (e)(2)(B)(I) of 28 U.S.C. § 1915 permit us to dismiss a frivolous appeal. An appeal is frivolous if it relies “on an indisputably meritless legal theory” or contains “clearly baseless” factual allegations. See Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991). We have reviewed Plaintiff’s brief, pleadings and the entire record before us. We conclude that Plaintiff’s appeal is frivolous for substantially the reasons set forth in the district court’s order of dismissal. Accordingly, Plaintiff’s Motion for Leave to Proceed on Appeal In Forma Pauperis is denied and his appeal is dismissed.

Motion DENIED; Appeal DISMISSED.

Entered for the Court

Bobby R. Baldock
Circuit Judge