

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**JUL 30 1998**

**PATRICK FISHER**  
Clerk

DAVID NOLLMEYER,

Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA;  
DELAWARE STATE POLICE,

Defendants-Appellees.

No. 97-2306

(D.C. No. CIV-95-1319-MV/DJS)

(D.N.M.)

**ORDER AND JUDGMENT\***

Before **PORFILIO, KELLY** and **HENRY**, Circuit Judges.\*\*

Mr. Nollmeyer, appearing pro se and in forma pauperis, appeals from the district court's dismissal with prejudice of his civil rights action against the United States for failure to state a claim, Fed. R. Civ. P. 12(b)(6), and against the Delaware State Police for lack of personal jurisdiction, Fed. R. Civ. 12(b)(2). We construe Mr. Nollmeyer's docketing statement filed in this court on September 23,

\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This 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 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. 34.1.9. The cause is therefore ordered submitted without oral argument.

1997, as the functional equivalent of a notice of appeal from the district court's order of April 14, 1997 dismissing the action and the September 2, 1997 denial of post-judgment motions. See Smith v. Barry, 502 U.S. 244, 248-49 (1992); Fed. R. App. P. 4(a)(1); 4(a)(4)(C). We have reviewed the record and affirm for substantially the same reasons relied upon by the magistrate judge, although we remand for the district court to enter judgment dismissing without prejudice the claims against the Delaware State Police, as these claims were dismissed for lack of personal jurisdiction. See Madara v. Hall, 916 F.2d 1510, 1514 n. 1 (11th Cir. 1990). To the extent Mr. Nollmeyer raises new issues in his appeal not addressed below, we deem them waived and do not address them. See Sac & Fox Nation v. Hanson, 47 F.3d 1061, 1063 (10th Cir.), cert. denied, 516 U.S. 810 (1995). We construe Mr. Nollmeyer's continued filings with this court as motions to file supplemental briefs and deny them.

AFFIRMED and REMANDED.

Entered for the Court

PER CURIAM