

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

DEC 10 1999

PATRICK FISHER
Clerk

ANN MICHELE CABRERA,

Plaintiff - Appellant,

v.

THOMAS J. HORGAS; DANIEL S.
McCONKIE,

Defendants - Appellees.

No. 99-4166 & 99-4193
(D. Ct. No. 98-CV-773-S)
(D. Utah)

ORDER AND JUDGMENT *

Before **TACHA**, **McKAY**, and **MURPHY**, Circuit Judges.

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)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

These two consolidated appeals are from an order of the district court adopting the report and recommendation of the magistrate judge in dismissing

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

plaintiff Cabrera's complaints as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). The appeals arise out of claims made by plaintiff pro se in the district court against defendant Mr. Horgas, who was her attorney in litigation stemming from physical and cognitive injuries plaintiff allegedly suffered in an accident, and against Mr. McConkie, who represented the Utah Transit Authority in that matter. On appeal, plaintiff alleges that the district court erred in dismissing her complaints, in which she alleged that defendants discriminated against her in violation of the Americans With Disabilities Act, 42 U.S.C. §§ 12101-12213. We affirm the order and deny the motion to proceed in forma pauperis.

Plaintiff alleges that over the course of representation as her attorney, defendant Horgas increasingly discriminated against her on the basis of her disabilities and refused to bring in a case worker/advocate, whom plaintiff describes as a "clarifier," to help her understand the import of her conversations with defendant. She also alleges that defendant McConkie, in representing the Utah Transit Authority in the accident litigation, misled the court. Plaintiff filed suit pursuant to 42 U.S.C. §§ 1983 and 1985, alleging that defendants Horgas and McConkie violated her federal rights.

The magistrate judge analyzed the allegations in plaintiff's complaint and determined that defendants did not act "under color of state law" as required by § 1983 and Polk County v. Dodson, 454 U.S. 312 (1981), and that the allegations

did not include a claim of class-based or racially discriminatory animus as required by § 1985 and Griffin v. Breckenridge, 403 U.S. 88 (1971). Thus, the magistrate judge determined that plaintiff's claims have no arguable basis for relief in either law or fact. See Neitzke v. Williams, 490 U.S. 319, 325 (1989). Therefore, the magistrate judge recommended that plaintiff's complaint be dismissed as frivolous pursuant to § 1915(e)(2)(B). The district court adopted the report and recommendation of the magistrate judge and dismissed the complaint.

We have reviewed all of the pleadings and the record in this case. Construing all of the filings liberally, as we must in the case of a pro se plaintiff, we agree with the district court that there is no basis in law or fact for the allegations in this complaint and that it was properly dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B). We affirm the order of the district court dismissing the complaints for substantially the reasons given by the magistrate judge and adopted by the district court. We further deny the motion for leave to proceed in forma pauperis. AFFIRMED and DISMISSED.

ENTERED FOR THE COURT,

Deanell Reece Tacha
Circuit Judge