

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 23, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

RAYVAUGHN WOODS,

Plaintiff - Appellant

v.

AT&T CORPORATION, Oklahoma City,
Oklahoma; AT&T CORPORATION,
Washington, DC,

Defendants - Appellees

No. 23-5000
(D.C. No. 4:22-CV-00499-CVE-JFJ)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **PHILLIPS** and **McHUGH**, Circuit Judges.

Rayvaughn Woods appeals pro se¹ from the district court’s dismissal of his complaint against two AT&T corporate defendants for failure to state a claim upon which relief may be granted. Exercising jurisdiction under 28 U.S.C. § 1291, we dismiss this appeal as frivolous.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

¹ We afford Mr. Woods’s pro se filings a liberal construction, but we do not act as his advocate. *See James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

Mr. Woods is incarcerated in Oklahoma. He filed a pro se complaint against two corporate defendants, AT&T Corporation, Oklahoma City, Oklahoma, and AT&T Corporation, Washington, D.C. In his complaint, he indicated he was seeking relief against the defendants under either 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).² And he alleged that the defendants violated their own corporate policies, the Personal Privacy Protection Act, his Fifth Amendment rights to due process and against self-incrimination, his Fourth Amendment right to be free from unreasonable searches and seizures, and his right to privacy.

The Prison Litigation Reform Act requires federal courts to screen civil complaints filed by prisoners. 28 U.S.C. § 1915A(a). On screening, the district court dismissed the complaint for failure to state a claim upon which relief could be granted. *See id.* § 1915A(b)(1).

First, the district court determined Mr. Woods failed to state a plausible claim for relief under § 1983 or *Bivens*. The court explained that to state a claim for relief under § 1983, a plaintiff must allege that a person acting under color of state law deprived him of his constitutional rights. *See R.* at 32 (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)). The court further explained that “[i]n very limited

² Mr. Woods first checked a box indicating that he was bringing a suit against “State or local officials (a § 1983 claim).” *R.* at 5. But then when asked what constitutional or statutory rights he claimed a State or local official violated under § 1983, he answered “N/A.” *Id.* Instead, he claimed that under *Bivens*, federal officials were violating his rights under the Fifth Amendment to the Constitution. *Id.* at 5-6.

circumstances, Bivens provides a remedy for citizens who allege that federal officials violated their constitutional rights.” *Id.* (citing *Egbert v. Boule*, 142 S. Ct. 1793, 1800 (2022)). But Mr. Woods “identifie[d] no defendants from whom he could seek relief under § 1983 or Bivens” because “[n]either named defendant is a state or federal official.” *Id.*

Second, the court determined that, “even accepting as true Mr. Woods’s factual allegations,” the court could “discern[] no conceivable, much less plausible, claims for relief against the named defendants under any other federal cause of action that Woods attempts to identify in the complaint.” *Id.* at 33. The court also noted that Mr. Woods’s alleged injury—an arm wound he purportedly suffered in 2008 during a house party—is wholly unrelated to the allegations in his complaint. The district court therefore dismissed the complaint for failure to state a claim on which relief may be granted.

Mr. Woods now appeals, but he fails to explain how the district court erred in dismissing his complaint for failure to state a claim on which relief may be granted. Instead, his brief includes arguments that are irrelevant, illogical, and unrelated to the district court’s decision. Because Mr. Woods has presented no reasoned argument to challenge the basis for the district court’s dismissal—and the result in this case is obvious—we conclude this appeal is frivolous. *See Wheeler v. Comm’r*, 528 F.3d 773, 782 (10th Cir. 2008) (“An appeal may be frivolous if it consists of irrelevant and illogical arguments based on factual misrepresentations and false premises, or when

the result is obvious, or the appellant’s arguments of error are wholly without merit.” (internal quotation marks omitted)).

Accordingly, we dismiss this appeal as frivolous, and we deny Mr. Woods’s motion to proceed on appeal without prepayment of costs or fees. We note that the district court’s dismissal counts as a strike, *see Hafed v. Federal Bureau of Prisons*, 635 F.3d 1172, 1175, 1177 (10th Cir. 2011), *abrogated on other grounds by Coleman v. Tollefson*, 575 U.S. 532, 534 (2015), and our dismissal counts as another strike, *see id.* at 1179. We also note that Mr. Woods had a prior strike. *See* Order of Dismissal, *Woods v. Copyright Infringement Emp. Who Withheld Fund as We the Best Music*, No. 19-cv-7904 (S.D.N.Y. Sept. 3, 2019), ECF No. 5 (dismissal of civil case as frivolous). Because Mr. Woods now has three strikes, he is no longer eligible to proceed without prepayment of costs or fees in federal court unless he establishes he is in imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

Entered for the Court

Gregory A. Phillips
Circuit Judge