

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

August 30, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

MEGAN KYTE,

Plaintiff - Appellant,

v.

STATE OF OREGON,

Defendant - Appellee.

No. 23-1221
(D.C. No. 1:23-CV-01648-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BACHARACH, KELLY, and MORITZ**, Circuit Judges.

Megan Kyte, proceeding pro se, appeals the district court’s order dismissing her 42 U.S.C. § 1983 complaint. The district court did not reach the merits of Kyte’s complaint, which asserts various constitutional violations arising from her criminal conviction in Oregon state court. Instead, it dismissed the complaint without prejudice under Federal Rule of Civil Procedure 41(b) for failure to comply with a prior court order that prohibits Kyte from filing new civil actions in the District of

* After examining the brief 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

Colorado unless she obtains either representation from a licensed attorney or permission from the court to proceed pro se.¹ The district court also denied her request to proceed in forma pauperis (IFP) on appeal, concluding that any appeal “would not be taken in good faith.” R. 21.

Now before us on appeal, Kyte resubmits portions of her complaint and faults the district court for failing to “respond to the case.” Aplt. Br. 9. But nowhere in her brief does she address the basis for the district court’s dismissal: her failure to comply with the court’s prior order imposing filing restrictions. And although we liberally construe Kyte’s pro se filings, we will not act as her advocate. *See Childers v. Crow*, 1 F.4th 792, 798 n.3 (10th Cir. 2021). By failing to address the basis for the district court’s ruling, Kyte has waived any challenge to it. *See Toevs v. Reid*, 685 F.3d 903, 911 (10th Cir. 2012) (explaining that “[a]rguments not clearly made in a party’s opening brief are deemed waived” and noting that we have “not hesitated” to apply this rule to pro se litigants). We therefore affirm the district court’s order. We also deny Kyte’s IFP motion because she has not offered “a reasoned, nonfrivolous

¹ We take judicial notice of that earlier order, in which the district court observed that it had dismissed nearly a dozen of Kyte’s lawsuits for various pleading failures, including improper venue, lack of subject-matter jurisdiction, and failure to cure or pay the filing fee. *Kyte v. Mayes*, No. 22-cv-02392, slip op. at 5–9 (D. Colo. Oct. 31, 2022); *see also Kyte v. Denver Health*, No. 23-1199, 2023 WL 4742407, at *1 & n.1 (10th Cir. July 25, 2023) (taking judicial notice of underlying filing-restrictions order).

argument” supporting her appeal. *Rolland v. Primesource Staffing, LLC*, 497 F.3d 1077, 1079 (10th Cir. 2007).

Entered for the Court

Nancy L. Moritz
Circuit Judge