

UNITED STATES COURT OF APPEALS

March 12, 2013

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

BILL MAX OVERTON,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

No. 12-6251
(D.C. No. 5:12-CV-00092-HE)
(W.D. of Okla.)

ORDER AND JUDGMENT*

Before **BRISCOE**, Chief Judge, **ANDERSON**, and **TYMKOVICH**, Circuit Judges.**

Bill Max Overton, proceeding *pro se*, appeals the district court's order dismissing without prejudice his complaint for failure to serve the United States with a summons and a copy of the complaint in accord with Rule 4 of the Federal Rules of Civil Procedure. He also asks us to grant him a default judgment as to a

* This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata and collateral estoppel.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

** 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(G). The cause is therefore ordered submitted without oral argument.

tax claim he asserts against the government and summary judgment as to a claim of perjury he claims he brought against an employee of the Justice Department.¹

We dismiss this appeal as frivolous. The district court correctly held that Overton did not comply with Rule 4: in contravention of the requirements of this rule, Overton failed to obtain a summons with a signature of the clerk of the court, sent the complaint to the defendants prior to it being filed, and did not effect service through a third party.² Yet Overton repeatedly ignored the district court's recitation of these basic requirements of Rule 4. Rather than comply with this rule, Overton sought to litigate the matter further by raising the frivolous arguments that he reiterates at this court.³ His arguments fail for the reasons outlined by the district court. We accordingly AFFIRM.

ENTERED FOR THE COURT

Timothy M. Tymkovich
Circuit Judge

¹ We have jurisdiction under 28 U.S.C. § 1291. *See Constien v. United States*, 628 F.3d 1207, 1210 (10th Cir. 2010).

² The United States has not waived these service requirements in this case.

³ Overton's other two claims are also frivolous: because of the failure to follow Rule 4, he is not entitled to default judgment or summary judgment as to any matter.