

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

APR 23 2004

PATRICK FISHER
Clerk

JOHN GRESCHNER,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

No. 03-1193
(D.C. No. 00-RB-167 (BNB))
(D. Colo.)

ORDER AND JUDGMENT *

Before **LUCERO** , **McKAY** , and **TYM KOVICH** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist 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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The 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.

John Greschner, proceeding pro se, appeals from the district court's judgment in favor of defendant, after trial to the court, on claims of negligence brought pursuant to the Federal Tort Claims Act. He also requests appellate counsel. We have jurisdiction over this appeal under 28 U.S.C. § 1291.

Appellant challenges the court's findings of fact, which we review for clear error, *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985), brings various legal arguments, which we review *de novo*, *Elder v. Holloway*, 510 U.S. 510, 516 (1994), and objects to the court's evidentiary rulings, which we review for abuse of discretion, *Faulkner v. Super Valu Stores, Inc.*, 3 F.3d 1419, 1433 (10th Cir. 1993). We construe appellant's pro se pleadings liberally, as required by *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

After our review of the record on appeal and the parties' briefs in light of these standards and applicable law, we are convinced that the district court neither abused its discretion nor erred in its rulings and that its findings of fact are not clearly erroneous. We particularly note the court's credibility determination in favor of defendant, which appellant does not challenge on

appeal. *See Anderson*, 470 U.S. at 575. The judgment of the district court is AFFIRMED; appellant's motion for appointment of counsel is DENIED. Appellant is reminded of his obligation under 28 U.S.C. § 1915 to continue making monthly payments until his entire appellate filing fee is paid in full.

Entered for the Court

Monroe G. McKay
Circuit Judge