

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MAR 19 2004

PATRICK FISHER
Clerk

TRACY MATTHEWS, an individual,

Plaintiff-Appellant,

v.

JOHN POTTER, Postmaster General,
United States Postal Service,

Defendant-Appellee.

No. 03-1203
(D.C. Nos. 00-M-897, 00-M-1616,
00-M-1617, 01-M-134)
(D. Colo.)

ORDER AND JUDGMENT *

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Appellant Tracy Matthews challenges orders of the district court 1) granting summary judgment to defendant s on all claims in his four consolidated cases; and 2) limiting discovery. Our jurisdiction over this appeal arises from 28 U.S.C. § 1291. We review the district court's summary judgment ruling *de novo* , applying the same standards as did the district court in determining appellant's claims. *See Simms v. Okla. ex rel. Dep't of Mental Health & Substance Abuse Servs.* , 165 F.3d 1321, 1326 (10th Cir. 1999). Our review of the court's discovery rulings, however, is limited to determining whether the court abused its discretion. *See GWN Petroleum Corp. v. OK-Tex Oil & Gas, Inc.* , 998 F.2d 853, 858 (10th Cir. 1993). Because appellant proceeds pro se, we liberally construe his filings. *Cummings v. Evans* , 161 F.3d 610, 613 (10th Cir. 1998). However, we will not imply factual allegations or create legal theories on a pro se plaintiff's behalf. *Whitney v. New Mexico* , 113 F.3d 1170, 1173-74 (10th Cir. 1997).

We have carefully reviewed the record in these consolidated cases, together with the parties' briefs, in light of these standards and applicable law. We note that appellant has raised arguments and theories which were not preserved for appeal, either because they were not raised to the district court or because they were not preserved by inclusion in appellant's objections to the magistrate judge's recommendation on his claims, later adopted by the district court. Therefore, we

decline to consider these arguments. *See Walker v. Mather (In re Walker)* , 959 F.2d 894, 896 (10th Cir. 1992); *Whitehead v. Okla. Gas & Elec. Co.* , 187 F.3d 1184, 1190 (10th Cir. 1999) . In light of appellant’s remaining arguments, we conclude that the district court correctly granted summary judgment to defendant s in these consolidated cases and that the district court’s discovery rulings were not an abuse of its discretion. For substantially the same reasons contained in the magistrate judge’s thorough and careful recommendation, adopted by the district court, the judgment of the district court is AFFIRMED. Appellant’s “Motion to Amend” his appeal to include certain discovery rulings is GRANTED. The mandate shall issue forthwith.

Entered for the Court

Monroe G. McKay
Circuit Judge