

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY 25 2004

PATRICK FISHER
Clerk

EDGAR ALLEN STITZEL,

Plaintiff-Appellant,

v.

JENNIFER VEIGA,

Defendant-Appellee.

No. 03-1449

(D. Colorado)

(D.C. No. 03-ES-1503)

ORDER AND JUDGMENT*

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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

Edgar Allen Stitzel filed a pro se “Complaint Pursuant to C.R.C.P. [Colorado Rules of Civil Procedure] Rule 106(a)(3)” in the District of Colorado, alleging that Jennifer Veiga, who is both an attorney and a member of the Colorado Legislature, violated the Constitution of Colorado by serving as attorney for the defendant in another civil action filed by Mr. Stitzel. The district court dismissed the complaint for lack of subject matter jurisdiction pursuant to FED. R. CIV. P. 12(h)(3). Mr. Stitzel now appeals. He has also filed a motion to proceed in this court without prepayment of costs. We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

Mr. Stitzel seeks relief for a violation of Article 3 of the Colorado Constitution, which provides

[t]he powers of the government of this state are divided into three distinct departments,—the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

COLO. CONST. art. III. He alleges that Ms. Veiga violated Article III “by mixing the powers of the legislative branch, with the judiciary powers,” Aplt’s Br. at 2, and asserts jurisdiction pursuant to Rule 106(a)(3) of the Colorado Rules of Civil Procedure. Because he has not alleged a violation of the United States Constitution or a federal statute, Mr. Stitzel has failed to state a federal question under 28 U.S.C. § 1331, nor has he provided an alternative basis for federal

jurisdiction. We therefore hold that the district court properly concluded that it lacked jurisdiction to consider Mr. Stitzel's claim.

Accordingly, and for substantially the same reasons as the district court, we AFFIRM the dismissal of Mr. Stitzel's complaint. We GRANT Mr. Stitzel's motion to proceed without prepayment of costs and remind Mr. Stitzel that he is obligated to continue making partial payments until the fee has been paid in full.

Entered for the Court,

Robert H. Henry
Circuit Judge