

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

OCT 2 2003

PATRICK FISHER
Clerk

LOUIE M. ACEVEDO,

Plaintiff-Appellant,

v.

R.J. REYNOLDS TOBACCO CO.,

Defendant-Appellee.

No. 03-4140

District of Utah

(D.C. No. 2:02-CV-465 TC)

ORDER AND JUDGMENT *

Before **TACHA**, Chief Judge, **McKAY** and **McCONNELL**, Circuit Judges.

After examining the briefs 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). This case is therefore submitted without oral argument.

Louie M. Acevedo, a prisoner in the custody of the State of Utah, filed this civil rights complaint against R.J. Reynolds Tobacco Co., pursuant to 42 U.S.C. § 1983. According to his complaint, he started smoking at the age of 11, and

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

recently, at the age of 47, suffered severe health problems relating to his continued and heavy tobacco use.

The district court dismissed his suit on the ground that R.J. Reynolds is a private entity, not liable under § 1983 in the absence of proof that the company acted under color of state law. In his handwritten brief in this Court, where he appears pro se, Mr. Acevedo offers no argument in response to the district court's reasoning, in the apparent misapprehension that his suit was dismissed for failure to pay filing fees.

Seeing no error in the district court's analysis, we AFFIRM the judgment of the district court.

Entered for the Court

Michael W. McConnell
Circuit Judge