

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**FEB 10 2005**

**PATRICK FISHER**  
Clerk

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GEORGE H. SMITH, JR.,

Plaintiff-Appellant,

v.

CHARLES E. SIMMONS;  
WILLIAM L. CUMMINGS; ROBERT  
SAPIEN; MARGARET ADAMSON;  
RONALD DOW,

Defendants,

and

(FNU) HARE, also known as (FNU)  
Bitler; DEBRA WHEAT; JOY  
FOGLE,

Defendants-Appellees.

No. 04-3264  
(District of Kansas)  
(D.C. No. 03-CV-3203-GTV)

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**ORDER AND JUDGMENT\***

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Before **EBEL, MURPHY, and McCONNELL**, Circuit Judges.

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel.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

After examining the briefs and appellate record, this court 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.

George Smith appeals the district court's *sua sponte* dismissal, upon initial review pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), of his 42 U.S.C. § 1983 civil rights complaint. This court reviews *de novo* the district court's *sua sponte* dismissal of a complaint pursuant to § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted. *Perkins v. Kan. Dep't of Corr.*, 165 F.3d 803, 806 (10th Cir. 1999). Upon consideration of the parties' briefs and contentions, the entire record on appeal, and *de novo* review of the district court's order, this court concludes that the district court did not err in dismissing Smith's complaint.

The district court is **AFFIRMED** for substantially those reasons set out in the district court's order dated August 27, 2003. Smith's Motion for Physical and Mental Examination is **DENIED**.

ENTERED FOR THE COURT

Michael R. Murphy  
Circuit Judge