

UNITED STATES COURT OF APPEALS April 30, 2007

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

JAMES A. CHILDS,

Plaintiff-Appellant,

v.

JOE ORTIZ, BARRY PARDUS;
DENNIS BURBANK; RANDY
FOSHEE; WILLIAM RICHTER; T.
KEELER; LT. HOLCOMB; DONNA
MURPHY, et al.; STEVE OWENS;
DONALD McCALL; JIM BROWN;
SGT. SIMMONS; SGT. MEYER; PHIL
MARMALEJO; JULIE RUSSELL;
JASON ELSE; ANTHONY A.
DECESARO; KAREN COOPER;
MICHAEL ARELLANO; LARRY
REID,

Defendants-Appellees.

No. 06-1337
(D.C. No. 06-CV-760-ZLW)
(Colorado)

ORDER AND JUDGMENT*

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

*After examining appellant's brief and the 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) and 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, or collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

James A. Childs, a *pro se* state prisoner,¹ brought a complaint in the district court challenging various conditions of his confinement. The district court dismissed his claims as repetitive, and thus frivolous, because he had raised identical claims in a separate pending action. We affirm.

Mr. Childs filed duplicative complaints that were received by the district court four days apart. The two complaints were treated as separately filed actions. The district court dismissed this second complaint as frivolous in light of its contemporaneously filed twin. “We review the district court's [28 U.S.C.] § 1915(e) dismissal for an abuse of discretion.” *McWilliams v. Colorado*, 121 F.3d 573, 574-75 (10th Cir. 1997). As noted by the district court, repetitious litigation of virtually identical causes of action may be dismissed as frivolous under § 1915(e). *Id.* at 574. As this complaint in fact repeats the claims made in *Childs v. Ortiz*, No. 06-cv-00741-BNB, slip op. (D. Colo. Aug. 4, 2006), the district court did not abuse its discretion by dismissing this action.

Mr. Childs seeks leave to proceed *in forma pauperis*. Because he has failed to demonstrate the existence of “a reasoned, nonfrivolous argument on the law and the facts in support of the issues raised on appeal,” *McIntosh v. U.S. Parole*

¹Because he is proceeding *pro se*, we review Mr. Childs’ filings liberally. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Comm'n, 115 F .3d 809, 812-13 (10th Cir. 1997), we deny his request to proceed *ifp*, and order immediate payment of the unpaid balance of the filing fee.

Accordingly, we **DENY** Mr. Child's motion to proceed *ifp* and we **DISMISS** the appeal.²

ENTERED FOR THE COURT

Stephanie K. Seymour
Circuit Judge

² We deny Mr. Child's "Motion to Confer Subject Matter Jurisdiction and Judgment on the Pleadings."