

UNITED STATES COURT OF APPEALS

Filed 4/25/96

TENTH CIRCUIT

SCOTT WILLIAM SWOBODA,

Plaintiff - Appellant,

v.

JERRY K. DUBACH; STEVEN J.
DAVIES; RAYMOND ROBERTS;
DANA FOLEY; FRED CLUCK;
RAYMOND GAUL; TOM KEYES;
ROBERTA A. DUBACH; EDNA FAY
REDER; PAM REMMERS; RHOMDA
DUBACH MILLER; JOI TRANT; TINA
MCNEMEE; MARY TURNER; LISA
BAURMAN; JODI COOK; JAMES
RUSH; ROBERT ROOT; ROBERT
MEYERS; DANA FOLEY; KANSAS
BOARD OF REGENTS
COMMISSIONERS, Doniphan County,

Defendants - Appellees.

No. 95-3284

(D.C. No. 90-CV-3550)

(D. Kan.)

ORDER AND JUDGMENT*

Before SEYMOUR, Chief Judge, McKAY and LUCERO, Circuit Judges.

After examining the briefs and the appellate record, this panel has determined

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Defendant Scott Swoboda originally brought this action alleging various constitutional violations related to his arrest and subsequent confinement. In his first appeal, we upheld the dismissal of all his claims with the exception of his claim that excessive force had been used in his arrest. Swoboda v. Dubach, 992 F.2d 286, 291 (10th Cir. 1993). We held that the excessive force claim survived Fed. R. Civ. P. 12(b)(6). Id. We also advised the district court to reexamine Mr. Swoboda's state law claims and his motions for appointment of counsel.

On remand, the district court dismissed the excessive force claim on summary judgment, refused to appoint counsel, and declined to exercise jurisdiction over the state law claims. The court also denied Mr. Swoboda leave to proceed in forma pauperis on appeal. We have reviewed the record and agree that Mr. Swoboda has failed to make a sufficient showing on the law or on the facts that would justify granting in forma pauperis status on appeal. Mr. Swoboda's motion for leave to proceed on appeal in forma pauperis is denied and this appeal is dismissed.

DISMISSED. The mandate shall issue forthwith.

Entered for the Court

Monroe G. McKay
Circuit Judge