

UNITED STATES COURT OF APPEALS

Filed 6/20/96

TENTH CIRCUIT

---

MELVIN SAMUEL RAINE,

Plaintiff - Appellant,

v.

BRITT COLLE,

Defendant - Appellee.

No. 95-3386  
(D. Ct. No. 95-3436)  
(D. Kan.)

---

**ORDER AND JUDGMENT\***

---

Before TACHA, BALDOCK, and BRISCOE, Circuit Judges.

---

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

This appeal is from an order of the district court dismissing pro se appellant Raine's action pursuant to 42 U.S.C. § 1983 for failure to state a claim. Plaintiff Raine argues on appeal that the district court erred in allegedly failing to recognize a

---

\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

constitutional right under the circumstances alleged in his complaint. We affirm.

Plaintiff's complaint alleges a deprivation of his constitutional rights in the actions of an attorney who was paid a retainer for representation and from whom plaintiff heard nothing for several weeks. All of the factual allegations contained in plaintiff's complaint and in plaintiff's brief on appeal relate to the relationship between the attorney and plaintiff. Plaintiff has failed to allege the deprivation of a constitutional right or the violation of a federal law of a defendant acting under color of state law. The relationship between plaintiff and his attorney involves no action by a state governmental official. Plaintiff's attorney was acting in a purely private capacity. Thus, we agree with the district court that plaintiff has failed to state a claim for relief and affirm the dismissal of this action. We GRANT in forma pauperis status and AFFIRM.

The mandate shall issue forthwith.

ENTERED FOR THE COURT,

Deanell Reece Tacha  
Circuit Judge