

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY 25 1999

PATRICK FISHER
Clerk

BARBARA SCHWARZ,

Plaintiff-Appellant,

v.

CENTRAL INTELLIGENCE AGENCY,

Defendant-Appellee.

No. 99-4016
(D. Utah)
(D.Ct. No. 97-CV-85-B)

ORDER AND JUDGMENT*

Before **BRORBY**, **EBEL**, and **LUCERO**, Circuit Judges.

After examining the briefs and 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); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Appellant Barbara Schwarz appeals *pro se* the district court's order

* This order and judgment is not binding precedent except under the doctrines of law of the case, *res judicata* and collateral estoppel.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

granting the Central Intelligence Agency's motion for summary judgment in her action filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and order granting the United States Postal Service's motion to dismiss her action for improper handling of her mail. We affirm.

Ms. Schwarz is a German citizen who seeks records from the Central Intelligence Agency on: (1) President Dwight Eisenhower, who she claims is her grandfather; (2) her husband, Mark C. Rathbun, who she alleges is the secret heir to the Rothschild fortune; (3) her father, L. Ron Hubbard, who she alleges is the son of President Eisenhower and from whom German Nazis kidnaped her at an early age and forced her to live in Germany; and (4) herself – allegedly the abducted granddaughter of President Eisenhower. Her goal in garnering Central Intelligence Agency records is to locate and rescue her husband, who she believes is wrongfully incarcerated in the United States for her rape and murder and to protect herself and others from a “German Nazi conspiracy.” Her action against the United Postal Service stems from her claim it mishandled certificates of mailing relating to her FOIA requests.

The district court dismissed her action against the United States Postal Service for failure to meet jurisdictional prerequisites and failure to state a claim

on which relief may be granted under 28 U.S.C. § 1915(e)(2)(B). The district court subsequently granted the Central Intelligence Agency's motion for summary judgment because Ms. Schwarz failed to meet the prerequisite for her information demand because she is not a United States citizen.

We have reviewed the record *de novo*, see *Montero v. Meyer*, 13 F.3d 1444, 1446 (10th Cir.), *cert. denied*, 513 U.S. 888 (1994), and find no reversible error. Under Federal Rule of Evidence 201, we take judicial notice of the fact Ms. Schwarz is a German citizen and are unpersuaded by her contention that she knows she is a United States citizen because she remembers being born here. Moreover, an examination of Ms. Schwarz's pleadings reveals they are purely frivolous and follow a recurring pattern of similarly unsuccessful FOIA actions filed by her against several other federal agencies, and at least two other actions against the United States Postal Service. In addition, Ms. Schwarz previously filed thirty-five frivolous petitions with the United States Supreme Court, prompting it to bar her from filing any prospective noncriminal filings with that Court. See *Schwarz v. National Sec. Agency*, 119 S. Ct. 1109 (1999). This Circuit alone has entertained at least ten appeals filed by Ms. Schwarz. We admonish Ms. Schwarz for the frivolousness of the present action and put her on notice that any future frivolous filings in this court will result in sanctions.

Accordingly, we **AFFIRM** the district court's orders granting the government's motion for summary judgment and motion to dismiss. A copy of this order shall be filed in the records of the United States Court of Appeals for the Tenth Circuit related to repeated frivolous filers.

Entered by the Court:

WADE BRORBY
United States Circuit Judge