

FEB 16 2000

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STEVEN W. KIRK,

Plaintiff-Appellant,

v.

CAPITAL SERVICES; CAPITAL
CORRECTIONAL RESOURCES
INC.; JIM BREWER; LARRY
FIELDS; VINCENT KNIGHT;
TOM BRENNAN; DOYLE COSLIN;
CARL WHITE; JIM H. GANT; T.R.
DECORDOVA; R. O'PRY; BILLY
KENT; R. WALKER; J. LEDET;
C. JONES; JOHN KINDON; JOHN
PLESS; CURTIS FOUNTAIN; TOM
C. MARTIN, Warden; DUANE
BERG; MIKE HAIDER; HICKS,
Food Supervisor; MARY CURTIS,

Defendants-Appellees.

No. 99-6178
(D.C. No. CIV-97-1881-L)
(W.D. Okla.)

ORDER AND JUDGMENT *

Before **BALDOCK** , **HENRY** , and **MURPHY** , Circuit Judges.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Plaintiff-appellant filed this suit pursuant to 28 U.S.C. § 1983, alleging various violations of his constitutional rights as a result of prison conditions and alleged acts of defendants. Defendants filed motions to dismiss or for summary judgment. The magistrate judge recommended that these motions be granted after thoroughly analyzing the allegations of fact and applicable law. After reviewing appellant's objections, the district court adopted the magistrate judge's recommendation and granted defendants' motions. The district court denied appellant leave to proceed on appeal without prepayment of fees.

On appeal, appellant re-urges his motion to proceed on appeal without prepayment of fees, and restates the arguments presented below, contending that 1) defendants have breached their contracts with each other regarding the housing of Oklahoma inmates, 2) prison conditions and standards and acts of the defendants, including his transfer to a private prison facility in Texas, violated his constitutional rights, including due process and equal protection, 3) he was wrongly deprived of earned credits against his sentence, and 4) defendants violated his religious rights and his access to the courts. He also presents

arguments not considered by the district court, such as his contention that this case should be handled under Multidistrict Litigation.

We review appellant's contentions de novo, applying the same standards as the district court in the first instance. *See Anderson v. Coors Brewing Co.* , 181 F.3d 1171, 1175 (10th Cir. 1999). First, we grant appellant leave to proceed on appeal without prepayment of fees. However, appellant remains liable for the amount of the appellate filing fee of \$105. Appellant has consented to disbursement of partial payments of the filing fees from his prison account. Appellant must pay \$105 to the clerk of the district court. His custodian shall, within thirty days of the date of this order, deduct and pay to the clerk of the United States District Court for the Western District of Oklahoma an amount equal to 20 percent of the greater of--

- A) the average monthly deposits to his account, or
- B) the average monthly balance in his account for the 6 month period immediately preceding filing of the notice of appeal in this case.

In either event, appellant's custodian shall forward payments from appellant's account equal to 20 percent of the preceding month's income each time the account exceeds \$10 until the filing fees are paid in full. The Clerk's Office of this court is directed to serve a copy of this order on appellant's custodian forthwith.

To the extent that appellant presents new arguments and contentions on appeal, we do not consider them here. *See Walker v. Mather (In re Walker)* , 959 F.2d 894, 896 (10th Cir. 1992). After considering the balance of appellant's arguments and the applicable law, we are convinced that the district court correctly decided this case. Therefore, for substantially the same reasons set forth in the magistrate judge's thorough Report and Recommendation dated October 8, 1999, the judgment of the United States District Court for the Western District of Oklahoma is AFFIRMED. Appellant's motions for consolidation and a temporary restraining order, for appointment of counsel, for prohibition and mandamus, his emergency request for injunction and motion for contempt, and his four-part motion requesting additional relief are DENIED. The mandate shall issue forthwith.

Entered for the Court

Bobby R. Baldock
Circuit Judge