

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

January 8, 2008

Elisabeth A. Shumaker
Clerk of Court

DOMINIC GROLL,

Plaintiff - Appellant,

v.

BOBBY JOHNSON; JOE ORTIZ,

Defendants - Appellees.

No. 07-1332

(D. Colorado)

(D.C. No. 06-cv-1739-ZLW)

ORDER AND JUDGMENT*

Before **KELLY, ANDERSON**, and **MURPHY**, Circuit Judges.

After examining appellant's brief and the appellate record, this court 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.

Proceeding *pro se*, Colorado state prisoner Dominic Groll appeals the district court's dismissal of the civil rights complaint he brought pursuant to 42 U.S.C. § 1983. Groll's complaint contained several claims relating to his

*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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

assignment to an inmate labor crew. Specifically, Groll alleged violations of his First, Eighth, and Fourteenth Amendment rights and further alleged prison officials retaliated against him for asserting his constitutional rights. On September 1, 2006, the district court granted Groll's request to proceed in forma pauperis and ordered him to make monthly payments of the \$350.00 filing fee or show cause each month why he has no assets and no means by which to make the payment. The order warned Groll that his suit could be dismissed by the court if he failed to stay current with his payment obligations.

On December 4, 2006, the district court dismissed Groll's lawsuit, concluding he failed to exhaust his administrative remedies with respect to all the claims raised in his complaint. Groll appealed. This court vacated the district court's decision and remanded the matter for further proceedings. *Groll v. Johnson*, 233 F. App'x 8410 (10th Cir. 2007) (applying *Jones v. Bock*, 127 S. Ct. 910 (2007)).

On remand, the district court issued an order to show cause, instructing Groll to show cause why his suit should not be dismissed for failing to comply with the September 1, 2006 order relating to the payment of the district court filing fee. After considering Groll's response to the order to show cause, the district court dismissed his suit without prejudice, noting he had remitted only two of the required payments and otherwise failed to comply with the September

1, 2006 order by sending a current certified copy of his inmate trust fund account statement in the months payments were not made.

This court reviews a dismissal for failure to comply with a court order for an abuse of discretion. *Mobley v. McCormick*, 40 F.3d 337, 340, 341 (10th Cir. 1994). Having reviewed Groll's appellate brief, the district court's order of dismissal, and the entire record on appeal, we conclude the district court did not abuse its discretion when it dismissed Groll's complaint without prejudice. Accordingly, the district court's judgment dismissing Groll's suit without prejudice is **affirmed**. Groll's application to proceed *in forma pauperis* on appeal is **granted**, but he is reminded that he remains obligated to continue making partial payments until his appellate filing fee is paid in full. *See* 28 U.S.C. § 1915(b).

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge