

February 17, 2010

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

VICTORIA A. PHILLIPS,

Plaintiff - Appellant,

v.

AT&T,

Defendant - Appellee.

No. 09-6264
(D.C. No. 09-CV-00368-C)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **KELLY, BRISCOE, and HOLMES**, Circuit Judges.**

Plaintiff-Appellant Victoria Phillips, appearing pro se, appeals from the district court's dismissal of her complaint without prejudice for failure to effect service. 1 R. 46. The complaint alleges that, in June 2008, Ms. Phillips received a phone bill from AT&T with an improper \$9.99 charge. 1 R. 3. Dissatisfied with AT&T's handling of the matter, she filed this complaint seeking \$45 million

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

** 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(G). The cause is therefore ordered submitted without oral argument.

in damages on the theories of identity theft, fraud upon her account, wire fraud and mail fraud. 1 R. 3. A magistrate judge granted IFP status, 1 R. 16, but then the district court, after ordering the Plaintiff to show cause, 1 R. 39, dismissed the complaint for inadequate proof of service, 1 R. 46. Given the grant of IFP status, the district court was responsible for ensuring service. See Olsen v. Mapes, 333 F.3d 1199, 1204 (10th Cir. 2003).

However, under 28 U.S.C. § 1915(e)(2)(B), a court may dismiss an action or an appeal that is frivolous or malicious or fails to state a claim on which relief may be granted. This is just such a case. The factual allegations contained in the complaint stray into the fanciful and delusional, see Neitzke v. Williams, 490 U.S. 319, 325 (1989), and it is certain that the complaint lacks facial plausibility warranting the relief requested, see Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).

APPEAL DISMISSED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge