

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 3, 2021

**Christopher M. Wolpert
Clerk of Court**

BRITTANY CROWNHART,

Plaintiff - Appellant,

v.

ANNE MAGILL COLLINS,

Defendant - Appellee.

No. 21-1047
(D.C. No. 1:20-CV-03670-LTB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **MORITZ, BALDOCK**, and **EID**, Circuit Judges.

Brittany Crownhart filed a pro se action against a nurse who allegedly included false and/or private information on her hospital discharge paperwork, claiming that this violated her rights under the Fourth Amendment and the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Pub. L. 104–191, 110 Stat. 1936 (codified as amended in scattered sections of 42 U.S.C.). Although Crownhart was not a prisoner and sought only monetary damages for relief, she

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. But it may be cited for its persuasive value. *See* Fed. R. App. P. 32.1(a) and 10th Cir. R. 32.1(A).

purported to file this action as a habeas petition under 28 U.S.C. § 2241, which permits a person in custody to challenge a conviction or sentence. And she paid only the \$5 filing fee for habeas petitions rather than the higher filing fee required for non-habeas civil actions. *See* 28 U.S.C. § 1914(a).

A magistrate judge concluded that Crownhart's filings were deficient because she had not used the proper form for her complaint, which sounded in malpractice rather than habeas, and she had neither paid the required filing fee for non-habeas actions nor applied to proceed without prepayment of fees.¹ Based on these deficiencies, the magistrate judge ordered Crownhart to "obtain and use the court-approved Complaint form, and either pay the \$402 filing fee in full or file an Application to Proceed in District Court Without Prepaying Fees or Costs." R. 15. The magistrate judge provided her with contact information for a pro se clinic that might be able to assist her in this matter. And the magistrate judge warned her that the action would be dismissed without prejudice—and without further notice—if she did not cure the deficiencies within 30 days.

Over the next five weeks, Crownhart submitted various nonresponsive filings, such as a request for the hospital to be notified of the lawsuit. But she neither filed a complaint on the court-approved form nor addressed the filing-fee issue.

¹ The magistrate judge also observed that Crownhart's husband had been permanently enjoined from filing pro se actions without leave of the court and that the handwriting on the pleadings in this case appeared to be Crownhart's husband's handwriting. "Given these circumstances," the magistrate judge warned Crownhart of her need to comply with Rule 11 of the Federal Rules of Civil Procedure in submitting any filings to the court. R. 15.

Crownhart has not shown that the district court exceeded the bounds of permissible choice by dismissing this action. The magistrate judge informed her of the specific deficiencies in her pleadings, told her how to cure these deficiencies, warned her that the action would be dismissed if she did not cure the deficiencies within 30 days, and referred her to a resource for potential assistance. The nature and alleged merits of her claims did not excuse her from compliance. But she neither challenged the magistrate judge's order nor attempted to comply with it. Under these circumstances, the district court did not abuse its discretion by dismissing the action without prejudice. *Cf. Florence v. Decker*, 153 F. App'x 478, 480 (10th Cir. 2005) (unpublished) (holding that district court did not abuse discretion in dismissing civil action without prejudice for failure to pay filing fees because plaintiff "ha[d] not shown that he was unable to comply with the court's order"; noting that "dismissal without prejudice is not an extreme sanction because the remedy is simply to cure the defect and refile the complaint").

We therefore affirm the district court's dismissal of the action without prejudice. And we deny Crownhart's motion to proceed in forma pauperis on appeal because she has not asserted "a reasoned, nonfrivolous argument" in support of her position. *Lister v. Dep't of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005).

Entered for the Court

Nancy L. Moritz
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-03670-GPG

BRITTANY CROWNHART,

Plaintiff,

v.

ANNE MAGILL COLLINS,

Defendant.

ORDER OF DISMISSAL

Plaintiff Brittany Crownhart is a resident of Grand Junction, Colorado. On December 15, 2020, she filed *pro se* an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, although she is not a prisoner, and paid a \$5.00 filing fee. (ECF No. 1).

The instant action was commenced, and on December 16, 2020, Magistrate Judge Gordon P. Gallagher ordered Plaintiff to cure certain deficiencies if she wishes to pursue any claims. (ECF No. 4). Specifically, Plaintiff was ordered file a Complaint on the court-approved form and either pay the applicable \$402 filing fee in full or file an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) on the court-approved form. Plaintiff was warned that the action would be dismissed without further notice if she failed to cure all of the deficiencies within thirty days.

On January 11, 2021, Plaintiff filed a Response to Motion for Notice of Lawsuit Pursuant to HIPPA (ECF No. 5), a Notice to File a Class Action Lawsuit (ECF No. 7),

and a Motion to Respond to Cure Deficiencies (ECF No. 8). On January 22, 2021, she filed a Motion to File Additional Brief. (ECF No. 9). Plaintiff did not file a Complaint or address the filing fee.

Plaintiff has failed to cure the deficiencies identified in Magistrate Judge Gallagher's December 16 order to cure within the time allowed. Therefore, the action will be dismissed without prejudice for failure to cure deficiencies.

Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal she also must pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that this action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to cure deficiencies. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit. It is

FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 27th day of January, 2021.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-03670-LTB

BRITTANY CROWNHART,

Plaintiff,

v.

ANNE MAGILL COLLINS,

Defendant.

JUDGMENT

Pursuant to and in accordance with the Order of Dismissal entered by Lewis T. Babcock, Senior District Judge, on January 27, 2021, it is hereby

ORDERED that Judgment is entered in favor of Defendant and against Plaintiff.

DATED at Denver, Colorado, this 27th day of January, 2021.

FOR THE COURT,

JEFFREY P. COLWELL, Clerk

By: s/ S. Phillips,
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

June 10, 2021

Christopher M. Wolpert
Clerk of Court

BRITTANY CROWNHART,

Plaintiff - Appellant,

v.

ANNE MAGILL COLLINS,

Defendant - Appellee.

No. 21-1047
(D.C. No. 1:20-CV-03670-LTB)
(D. Colo.)

ORDER

Before **MORITZ, BALDOCK**, and **EID**, Circuit Judges.

Appellant's petition for rehearing is denied.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

