

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-5225

September Term, 2019

1:18-cv-00735-UNA

Filed On: September 11, 2019

Cedrick Euron Draper,

Appellant

v.

United States Postal Service Headquarters,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Millett and Pillard, Circuit Judges, and Sentelle, Senior Circuit
Judge

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief and appendix filed by the appellant. *See* Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Based on the foregoing and the “motion to leave to file motion to appeal,” which the court construes as a mandamus petition, it is

ORDERED AND ADJUDGED that the district court’s June 12, 2018 order dismissing appellant’s case for lack of jurisdiction be affirmed. Appellant has shown no error in the district court’s decision dismissing his case, which raises “fraudulent misrepresentation” and “tortious interference” claims under the Federal Tort Claims Act (FTCA). The district court correctly held these claims were excepted from the FTCA’s waiver of sovereign immunity and that appellant had not exhausted his administrative remedies. *See* 28 U.S.C. §§ 2675, 2680(h). Contrary to the arguments made in his appellate brief, 42 U.S.C. § 1983 does not apply to appellant’s claims against the federal government. *See, e.g., Williams v. United States*, 396 F.3d 412, 414-15 (D.C. Cir. 2005). In addition, Title VII of the Civil Rights Act does not provide jurisdiction for appellant’s FTCA claims, and, in any event, appellant has not shown that he has exhausted his Title VII administrative remedies, a prerequisite for a Title VII claim. *See Payne v. Salazar*, 619 F.3d 56, 65 (D.C. Cir. 2010). The district court’s February 28, 2019 order denying appellant’s motion to reopen and amend the complaint is not before the court for review. Appellant did

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not file a new or amended notice of appeal as to that order, see Fed. R. App. P. 4(a)(4)(B)(ii), nor does he provide any argument challenging that order, see United States ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004) (“Ordinarily, arguments that parties do not make on appeal are deemed to have been waived.”). It is

FURTHER ORDERED that the “motion to leave to file motion to appeal,” which the court construes as mandamus petition, be denied. The motion seeks an order from this court directing the Charlottesville Circuit Court to take certain actions in appellant’s Virginia state court case. The All Writs Act empowers this court to issue writs of mandamus to protect its prospective jurisdiction. See 28 U.S.C. § 1651(a); Telecomm’ns Research & Action Ctr. v. FCC, 750 F.2d 70, 76 (D.C. Cir. 1984). This court has no future appellate authority over the Virginia state courts and cannot compel the Charlottesville Circuit Court to act. See Lance v. Dennis, 546 U.S. 459, 463 (2006) (“[L]ower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments.”).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk