

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

May 1, 2015

FOR THE TENTH CIRCUIT

**Elisabeth A. Shumaker
Clerk of Court**

CLEARONE COMMUNICATIONS,
INC., a Utah corporation,

Plaintiff - Appellee,

v.

ANDREW CHIANG; JUN YANG;
LONNY BOWERS; WIDEBAND
SOLUTIONS, INC., a Massachusetts
corporation; VERSATILE DSP, a
Massachusetts corporation; BIAMP
SYSTEMS, an Oregon corporation,

Defendants.

DONALD BOWERS,

Interested Party - Appellant.

No. 15-4027
(D.C. No. 2:07-CV-00037-DN)
(D. Utah)

ORDER

Before **BRISCOE**, Chief Judge, **KELLY**, and **MORITZ**, Circuit Judges.

Appellant Donald Bowers is the subject of ongoing civil and criminal contempt proceedings. He seeks to appeal the district court's order denying his pro se motion filed in the civil case for access to certain sealed documents on the civil docket, which he sought for the purpose of defending himself in his criminal case.

Bowers filed his notice of appeal on March 9, 2015. On April 1, 2015, this court issued a decision addressing six previous appeals by Bowers in the civil case. *See ClearOne Commc'ns, Inc. v. Chiang*, Nos. 14-4052, 14-4064, 14-4094, 14-4103, 14-4104, 14-4108, 2015 WL 1542370 (10th Cir. Apr. 1, 2015). The court dismissed five of those appeals for lack of jurisdiction because the civil contempt proceedings were ongoing and there was no basis for interlocutory review of five of the six orders Bowers had appealed. *See id.* at *1. The court exercised jurisdiction over the sixth appeal under 28 U.S.C. § 1292(a).

Based on the court's April 1 decision, the clerk issued an order to Bowers to show cause why this appeal should not also be dismissed for lack of jurisdiction. In response, Bowers asserts that the order denying his request for access to sealed documents for the purpose of defending himself in his criminal case is an appealable collateral order under *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). He argues that, in denying his motion, the district court finally decided the question of his Fourteenth Amendment right to the documents for purposes of his criminal defense, a question separate from the merits of the civil contempt proceedings.

This argument is unavailing. Bowers's request for access to these documents for purposes of his criminal defense is akin to a request for discovery. Bowers can seek access to the documents through the discovery process in his criminal case, where he is represented by counsel. Discovery orders, whether entered in a civil or a criminal case, are not immediately appealable under the collateral order doctrine. *See, e.g., United States v. West*, 672 F.2d 796, 798 (10th Cir. 1982) (noting that discovery orders are

interlocutory and not subject to review by immediate appeal). Bowers cannot circumvent finality principles by pursuing discovery for his criminal defense via motions filed in the civil case and then claiming that the matters are collateral.

Appeal dismissed for lack of jurisdiction.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, reading "Jane K. Castro", with a long horizontal flourish extending to the right.

by: Jane K. Castro
Counsel to the Clerk