

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 4, 2018

Elisabeth A. Shumaker
Clerk of Court

In re: DONALD COWAN,

Petitioner.

No. 17-5122
(D.C. No. 4:17-CV-00324-TCK-FHM)
(N.D. Okla.)

ORDER

Before **TYMKOVICH**, Chief Judge, **LUCERO** and **McHUGH**, Circuit Judges.

Donald Cowan petitions this court for a writ of mandamus directing the United States District Court for the Northern District of Oklahoma to grant his motion for partial summary judgment or to conduct an evidentiary hearing on the issues presented therein. Mr. Cowan also seeks leave to proceed in this court without prepayment of fees (IFP).

“[W]e will grant a writ only when the district court has acted wholly without jurisdiction or so clearly abused its discretion as to constitute usurpation of power.” *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (internal quotation marks omitted). To be entitled to the extraordinary remedy of a writ of mandamus, Mr. Cowan “must have no other adequate means to attain the relief he desires”; his right to the writ must be “clear and indisputable”; and we must be satisfied that the writ is an appropriate exercise of our discretion under the circumstances. *Id.* at 1187 (internal quotation marks omitted).

Mr. Cowan's petition does not meet this high standard for mandamus relief. Accordingly, we deny the petition. We grant his motion to proceed on appeal without prepayment of costs or fees. But because 28 U.S.C. § 1915(a)(1) allows us to excuse only *prepayment* of fees, he remains obligated to pay all filing and docketing fees to the clerk of the district court.

Entered for the Court

A handwritten signature in cursive script that reads "Elisabeth A. Shumaker". The signature is written in black ink and includes a long, sweeping horizontal flourish at the end.

ELISABETH A. SHUMAKER, Clerk