

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 20, 2018

**Elisabeth A. Shumaker
Clerk of Court**

MARCUS A. MURPHY,

Plaintiff - Appellant,

v.

WAYNE W. WILLIAMS, in his official
capacity as Colorado Secretary of State,

Defendant - Appellee.

No. 18-1363
(D.C. No. 1:18-CV-01919-MSK-KMT)
(D. Colo.)

ORDER

Before **LUCERO, BACHARACH**, and **CARSON**, Circuit Judges.

Pro se plaintiff Marcus Murphy filed a notice of appeal in the underlying district court case that did not identify any orders of that court as the subject of his appeal. After reviewing the status of the district court proceedings and the notice of appeal, this court entered an order to show cause as to why the appeal should not be dismissed for lack of appellate jurisdiction. A few days later, the appellant filed in the district court an amended notice of appeal, this time identifying the August 29, 2018 order denying his motion to expedite as the order being appealed. Mr. Murphy then filed in this court a memorandum brief addressing the jurisdictional defects we identified in our jurisdictional challenge order. After considering the memorandum brief, the district court record and the applicable law, we dismiss this appeal.

This court may exercise jurisdiction to review final orders of the district court, see 28 U.S.C. § 1291, and specific types of interlocutory and collateral orders not applicable here, see 28 U.S.C. § 1292; Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545–46 (1949). Piecemeal review of interlocutory district court orders is generally not allowed. Southern Ute Indian Tribe v. Leavitt, 564 F.3d 1198, 1207 (10th Cir. 2009). Additionally, orders entered by the magistrate judge not passed upon by the district judge are not directly appealable to this court. 28 U.S.C. § 636(b)(1)(A); Phillips v. Beierwaltes, 466 F.3d 1217, 1221 (10th Cir. 2006). The magistrate judge’s August 29 minute order is a procedural order that did not conclusively resolve the entire or any part of the case and was not reviewed by the district court. Further, the order neither expressly nor had the practical effect of resolving any request for injunctive relief. Thus, the August 29 interlocutory order is not immediately appealable. The appellant’s arguments in his memorandum brief do not persuade us otherwise.

For these reasons, we conclude that this court lacks jurisdiction to consider this appeal. As a result, the appeal must be and is dismissed. D&H Marketers, Inc. v. Freedom Oil & Gas, Inc., 744 F.2d 1443, 1444 (10th Cir. 1984) (“Jurisdiction to consider an appeal is not discretionary.”).

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith
Counsel to the Clerk