

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Brummett v. Martinez

Brummett · No. 1:21-cv-00086-BAM (PC) · Decided May 15, 2025

SUMMARY

The Eastern District of California grants a pro se prisoner’s request for copies of documents comprising the excerpts of record in his appeal. The court directs preparation and delivery of specified pretrial, motions in limine, and trial transcripts at government expense under 28 U.S.C. § 753(f), certifies that the appeal is not frivolous, and strikes prior transcript request forms.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 15, 2025
DOCKET	1:21-cv-00086-BAM (PC)
DISPOSITION	other
PROCEDURAL POSTURE	In a prisoner civil-rights action under 42 U.S.C. § 1983, after a jury returned a verdict for Defendant and Plaintiff noticed an appeal to the Ninth Circuit, Plaintiff moved for free copies of transcripts and documents needed to prepare his appellate brief.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Melvin Ray Brummett, Jr. v. Martinez

TOPICS

- appellate procedure
- costs
- prisoners rights
- civil rights
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- prisoner civil rights
- government-funded transcripts

QUESTIONS PRESENTED

1. Whether a pro se prisoner proceeding in forma pauperis on appeal was entitled under Ninth Circuit Rule 30-3 to copies of documents and transcripts needed to prepare his appellate brief.
2. Whether the district court should certify under 28 U.S.C. § 753(f) that the appeal was not frivolous and approve preparation of the requested transcripts at government expense.
3. Whether previously filed transcript request forms should be stricken in light of the amended order.

HOLDINGS

1. A pro se prisoner proceeding in forma pauperis on appeal is entitled under Ninth Circuit Rule 30-3 to copies of documents comprising the excerpts of record for preparing an appellate brief, at no charge.
2. The district court may approve transcript preparation at government expense when the appeal is not frivolous and presents a substantial question, and the requested transcripts are needed to decide the appellate issues.
3. The previously filed transcript request and amended transcript request forms were properly stricken because the amended order superseded the prior order and independently resolved the transcript request.

KEY QUOTATIONS

“The district court has the power to order a free transcript furnished if it finds that the suit . . . is not frivolous and the transcript is needed to decide the issue presented . . .” (at 2)

“As these proceedings were preserved in audio format only, a transcript is needed for Plaintiff to fully brief these issues on appeal.” (at 2)

FACTUAL BACKGROUND

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a § 1983 action. After a two-day jury trial, the jury found in favor of Defendant Martinez, and Plaintiff appealed. Plaintiff sought transcripts of pretrial, motions-in-limine, and trial proceedings because his appeal challenged discovery-related rulings and those proceedings had been recorded only in audio format.

PROCEDURAL HISTORY

The case proceeded to a jury trial on October 16 and 17, 2024, and the jury returned a verdict for Defendant. Judgment was entered, and Plaintiff filed a notice of appeal on November 1, 2024; the appeal was assigned Ninth Circuit Case No. 24-6736. The district court granted Plaintiff’s request for transcripts, certified under 28 U.S.C. § 753(f) that the appeal was not frivolous as to the identified issue, approved transcript costs at government expense, and struck prior transcript request forms.

DISPOSITION

other

CASES CITED

- Henderson v. United States, 734 F.2d 483, 484 (9th Cir. 1984)
- Pembroke v. Wilson, 370 F.2d 37, 39 (9th Cir. 1966)
- Randle v. Franklin, No. CV-08-00845-JAT, 2012 WL 201757, at *2 (E.D. Cal. Jan. 23, 2012)
- United States v. MacCollum, 426 U.S. 317, 325 (1976)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 MELVIN RAY BRUMMETT, JR., Case No. 1:21-cv-00086-BAM (PC) 12
Plaintiff, Appeal No. 24-06736 13 v. AMENDED1 ORDER GRANTING PLAINTIFF’S
MOTION REQUESTING 14 MARTINEZ, COPIES OF ALL THE DOCUMENTS
COMPRISING THE EXCERPTS OF 15 Defendant. RECORD (ECF No. 175) 16 ORDER
APPROVING COSTS OF 17 TRANSCRIPTS AT GOVERNMENT EXPENSE 18 ORDER
STRIKING TRANSCRIPT 19 REQUEST AND AMENDED TRANSCRIPT REQUEST 20 (ECF
Nos. 177, 178) 21 22 Plaintiff Melvin Ray Brummett, Jr. (“Plaintiff”), a state prisoner, proceeded
pro se and in 23 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

All parties consented to 24 Magistrate Judge jurisdiction. (ECF No. 105.) 25 This matter
proceeded to a jury trial on October 16, 2024, on Plaintiff’s claims against 26 Defendant Martinez
(“Defendant”). On October 17, 2024, the jury returned a verdict in favor of 27 Defendant and
against Plaintiff. (ECF Nos. 154, 165.) Judgment was entered accordingly. (ECF 28 1 The instant
order supersedes the Court’s May 13, 2025 order, (ECF No. 176).

1 No. 166.) On November 1, 2024, Plaintiff filed a notice of appeal. (ECF No. 168.) The notice of
2 appeal was processed to the Ninth Circuit Court of Appeals and assigned Case Number 24-6736.
3 (ECF Nos. 169, 170.) 4 Currently before the Court is Plaintiff’s motion requesting copies of all
documents 5 comprising the excerpts of record, filed May 9, 2025. (ECF No. 175.)

Specifically, Plaintiff 6 requests that the Clerk of the Court provide “the records of his trial
transcripts, pretrial hearing 7 transcripts, and in limine hearing transcripts in order to prepare his
Ninth Circuit Court of 8 Appeals, Court Ordered Brief,” and requests that the transcripts be
provided within twenty-one 9 days, at no charge, so he can submit his opening brief on June 9,
2025.

Plaintiff cites to Ninth 10 Circuit Rule 30-3 in support of his request. (Id.) 11 Ninth Circuit Rule
30-3 provides that in appeals brought by prisoners proceeding pro se, 12 the Clerk of the Court
shall provide, within 21 days from the receipt of a prisoner’s written 13 request, copies of
documents comprising the excerpts of record for the purpose of preparing briefs 14 on appeal.

Such copies will be produced at no charge for prisoners proceeding in forma pauperis. 15 Circuit
Rule 30-3. 16 Upon review of the docket, it appears Plaintiff is requesting transcripts for the
following 17 proceedings: 18 1. August 13, 2024 Pretrial Conference (ECF No. 119) 19 2.

September 30, 2024 Motions in Limine Hearing (ECF No. 138) 20 3. October 2, 2024 Motions in Limine Hearing (ECF No. 141) 21 4.

October 7, 2024 Motions in Limine Hearing (ECF No. 148) 22 5. October 16, 2024 Jury Trial (Day 1 of 2) (ECF No. 153) 23 6. October 17, 2024 Jury Trial (Day 2 of 2) (ECF No. 154) 24 The above proceedings were recorded using the Court's Electronic Court Recorder 25 Operator ("ECRO") in audio format only.

Accordingly, the Court will direct the Clerk of the 26 Court to order transcripts of the above proceedings, after which hard copies of the complete 27 transcripts will be mailed to Plaintiff, at no charge to Plaintiff. 28 /// 1 As Plaintiff is proceeding in forma pauperis on appeal, the Court further finds that the 2 costs for preparation of the transcripts shall be paid for at the expense of the government, 3 pursuant to 28 U.S.C. § 753(f).² Section 753(f) allows for the government to pay for transcripts 4 provided to plaintiffs in civil matters when either the trial or circuit judge has certified that the 5 appeal is not frivolous (but presents a substantial question).

28 U.S.C. § 753(f); *Henderson v. 6 United States*, 734 F.2d 483, 484 (9th Cir. 1984) (stating court order directing production of 7 transcript at government expense pursuant to Section 753(f) constitutes implicit finding by court 8 that appeal presents substantial issue). A claim is frivolous if the plaintiff can make no rational 9 argument in law or facts to support his claim for relief.

See *Pembroke v. Wilson*, 370 F.2d 37, 39 10 (9th Cir. 1966). A substantial question is defined as a legal issue that is "reasonably debatable." 11 See *Randle v. Franklin*, No. CV-08-00845-JAT, 2012 WL 201757, at *2 (E.D. Cal. Jan. 23, 12 2012). "The district court has the power to order a free transcript furnished if it finds that the 13 suit... is not frivolous and the transcript is needed to decide the issue presented..." *United 14 States v. MacCollum*, 426 U.S. 317, 325 (1976).

15 As noted above, Plaintiff is proceeding in forma pauperis on appeal by order of the Ninth 16 Circuit. Plaintiff's November 1, 2024 notice of appeal contends that Plaintiff's appeal is based, in 17 part, on the Court's specific discovery rulings made throughout the pretrial conference, motions 18 in limine hearings, and trial. (See, e.g., ECF No. 168, p. 4, 9–10.)

As these proceedings were 19 preserved in audio format only, a transcript is needed for Plaintiff to fully brief these issues on 20 appeal. As the Court cannot find that there is "no rational argument in law or facts to support 21 [Plaintiff's] claim for relief" on this issue, by instant order, the Court certifies that the appeal is 22 not frivolous.³ 23 Finally, in light of the instant amended order, the Court finds it appropriate to strike the 24 transcript request and amended transcript request forms previously entered on the docket.

(ECF 25 2 28 U.S.C. § 1915(c) also provides that "the court may direct payment by the United States of the expenses of... 26 printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title." In

this case, the Ninth Circuit Court of Appeal has not informed this Court 27 that printing of the record on appeal is required in this action, so 28 U.S.C. § 1915(c) is not applicable.

28 3 The Court states no opinion regarding the other arguments raised in Plaintiff's notice of appeal. 1 Nos. 177, 178.) 2 Accordingly, IT IS HEREBY ORDERED as follows: 3 1. Plaintiff's motion requesting copies of all documents comprising the excerpts of record, 4 (ECF No. 175), is GRANTED; 5 2.

The Court Reporter is DIRECTED to order transcripts, for delivery to the Court, for the 6 following proceedings: 7 a. August 13, 2024 Pretrial Conference (ECF No. 119) 8 b. September 30, 2024 Motions in Limine Hearing (ECF No. 138) 9 c. October 2, 2024 Motions in Limine Hearing (ECF No. 141) 10 d. October 7, 2024 Motions in Limine Hearing (ECF No. 148) 11 e. October 16, 2024 Jury Trial (Day 1 of 2) (ECF No. 153) 12 f. October 17, 2024 Jury Trial (Day 2 of 2) (ECF No. 154) 13 3.

As soon as the transcripts are completed and delivered to the Court, the Court Reporter is 14 DIRECTED to serve hard copies of the transcripts to Plaintiff, by mail, at no charge to 15 Plaintiff; 16 4. The Court approves preparation of the above-requested transcripts, at government 17 expense, pursuant to 28 U.S.C. § 753(f); 18 5.

The transcript request and amended transcript request forms, (ECF Nos. 177, 178), are 19 STRICKEN from the record; and 20 6. The Clerk shall serve this order on Court ECRO Reporter (O.R.) and Court Services 21 Supervisor (A.R.). 22 IT IS SO ORDERED. 23 24 Dated: May 14, 2025 /s/ Barbara A. McAuliffe _ UNITED STATES MAGISTRATE JUDGE 25 26 27 28