

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

OPINION

(PC) Brummett v. Martinez

PER CURIAM.

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 *Pembrook 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 not frivolous.³ Finally, in light of the instant amended order, the Court finds it appropriate to strike the 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 . . . 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 that printing of the record on appeal is required in this action, so 28 U.S.C. § 1915(c) is not applicable. 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