

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gary Paul Smith v. Municipality of Fresno, et al.

Smith v. Municipality of Fresno · No. 2:21-cv-1992 KJM AC P · Decided March 6, 2023

SUMMARY

The United States District Court for the Eastern District of California directed a former state prisoner proceeding pro se to submit a non-prisoner application to proceed in forma pauperis. The court also ordered him to show cause why defendants’ pending motion for summary judgment should not be granted, or alternatively to file a response to that motion, within thirty days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 6, 2023
DOCKET	2:21-cv-1992 KJM AC P
DISPOSITION	other
PROCEDURAL POSTURE	In a prisoner civil-rights action under 42 U.S.C. § 1983, the magistrate judge ordered the apparently released plaintiff to submit a non-prisoner in forma pauperis application and to show cause why defendants' pending motion for summary judgment should not be granted, or alternatively to respond to that motion.
PRECEDENTIAL VALUE	Nonprecedential procedural order
PARTIES	Gary Paul Smith v. Municipality of Fresno, et al.

TOPICS

- summary judgment
- prisoners rights
- section 1983
- civil procedure

PRACTICE AREAS

- civil rights
- civil procedure
- prisoner litigation
- summary judgment

QUESTIONS PRESENTED

1. Whether the court should require plaintiff, who appeared to have been released from custody, to submit an in forma pauperis application applicable to non-prisoners.
2. Whether plaintiff should be ordered to show cause why defendants' pending motion for summary judgment should not be granted or, alternatively, be given an opportunity to respond to the motion.

HOLDINGS

1. Because the record indicated that plaintiff was no longer incarcerated, the court directed him to complete and file an in forma pauperis application for non-prisoners within thirty days.
2. The court ordered plaintiff within thirty days either to show cause why defendants' motion for summary judgment should not be granted or to file a response to the motion.

FACTUAL BACKGROUND

Plaintiff, a former state prisoner proceeding pro se and in forma pauperis, notified the court in December 2022 and January 2023 that he had changed addresses. The new address did not appear to be a prison location, and a search by plaintiff's name and prison identification number yielded no records. Defendants filed a motion for summary judgment, but plaintiff had not filed an opposition or statement of non-opposition.

PROCEDURAL HISTORY

Plaintiff filed a civil-rights action while proceeding pro se and in forma pauperis. After plaintiff reported addresses that did not appear to be prison locations and a prison-record search returned no results, the court directed him to update his in forma pauperis application as a non-prisoner. Defendants filed a motion for summary judgment on January 20, 2023, and plaintiff had not responded, so the court issued an order to show cause and gave him a final opportunity to respond.

DISPOSITION

other

CASES CITED

- Adler v. Gonzalez, 2015 WL 4041772, at *1, 2015 U.S. Dist. LEXIS 85909 (E.D. Cal. July 1, 2015), report and recommendation adopted, 2015 WL 4668668, 2015 U.S. Dist. LEXIS 103386 (E.D. Cal. Aug. 6, 2015)

OPINION

(PC) Smith v. Municipality of Fresno County

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 GARY PAUL SMITH, No. 2:21-cv-1992 KJM AC P

12 Plaintiff, 13 v. ORDER 14 MUNICIPALITY OF FRESNO, et al., 15 Defendants. 16 17
Plaintiff, a former state prisoner proceeding pro se and in forma pauperis, has filed this 18 civil
rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United 19 States
Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 For the following
reasons, plaintiff will be directed to complete and file an application to 21 proceed in forma
pauperis by a non-prisoner. In addition, plaintiff will be ordered to show cause 22 why defendant's
motion for summary judgment should not be granted. In the alternative, plaintiff 23 will be given a
final opportunity to file a response to defendants' motion for summary judgment.

24 I. IN FORMA PAUPERIS APPLICATION FOR NON-PRISONER

25 In December 2022, and in January 2023, plaintiff filed notices with the court that he had 26
changed addresses. ECF Nos. 132, 134. The address provided does not appear to be a prison 27
location. See id. In addition, a search for plaintiff by name and by prison inmate number yielded
28 a "no records found" result. See <https://inmatelocator.cdcr.ca.gov/Results.aspx> (search CDCR 1
|| Number field for "H49197" or search Last Name field for "Smith", First Name field for "Gary")
2 || (last visited March 3, 2023). Accordingly, it appears plaintiff is no longer incarcerated, and he 3
|| will be directed to file an application to proceed in forma pauperis for non-prisoners. See e.g. 4 ||
Adler v. Gonzalez, 2015 WL 4041772, at *1, 2015 U.S. Dist. LEXIS 85909 (E.D. Cal. July 1, 5 ||
2015), report and recommendation adopted, 2015 WL 4668668, 2015 U.S. Dist. LEXIS 103386 6
|| (E.D. Cal. Aug. 6, 2015) (Case No. 1:11-CV-1915 LJO MJS) (stating released prisoner may 7 ||
proceed under non prisoner provisions of in forma pauperis statute after submitting updated 8 ||
poverty affidavit). Plaintiff will be given thirty days to do so. The Clerk of Court will be directed 9
|| to send plaintiff the appropriate form.

10 II. ORDER TO SHOW CAUSE

11 On January 20, 2023, defendants filed a motion for summary judgment. ECF No. 135. 12 ||
Local Rule 230 requires that plaintiff file either an opposition or a statement of non-opposition. 13
|| See generally L.R. 230(c), (1). To date, plaintiff has not filed a response to defendants' motion.
14 || Therefore, he will be ordered to show cause why defendants' motion should not be granted
and 15 || do so within thirty days. In the alternative, plaintiff may file a response to the motion for
16 || summary judgment. 17 Accordingly, IT IS HEREBY ORDERED that: 18 1. The Clerk of
Court shall send plaintiff a copy of the court's in forma pauperis 19 || application for a non-
prisoner; 20 2. Within thirty days of the date of this order, plaintiff shall file the in forma pauperis
21 || application for a non-prisoner with the court, and 22 3. Within thirty days of the date of this
order, plaintiff shall file a showing of cause why 23 || defendants' motion for summary judgment
(ECF No. 135) should not be granted. In the 24 || alternative, within the same period, plaintiff may
file a response to defendants' motion for 25 || summary judgment. . . 26 || DATED: March 3, 2023

Lhwwdrr— Chane

7 ALLISON CLAIRE

UNITED STATES MAGISTRATE JUDGE

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