

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

Adam Elliott Sr. v. J. Russell Derr, Judge, in his Official Capacity

Elliott · No. 8:25CV731 · Decided January 21, 2026

SUMMARY

The United States District Court for the District of Nebraska grants Adam Elliott Sr.’s motion to proceed in forma pauperis. Because his account balance was \$0.00, the court suspends collection of the initial partial filing fee and directs collection of the full \$350.00 filing fee through monthly installments under the Prison Litigation Reform Act.

CASE DETAILS

COURT	United States District Court for the District of Nebraska
WRITING FOR THE COURT	Joseph F. Bataillon
JURISDICTION	United States District Court for the District of Nebraska
DECIDED	January 21, 2026
DOCKET	8:25CV731
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for leave to proceed in forma pauperis in a prisoner civil-rights action. The court granted the motion, suspended assessment of the initial partial filing fee because Plaintiff had no funds, and directed collection of the filing fee through monthly installments.
PRECEDENTIAL VALUE	unpublished
PARTIES	Adam Elliott Sr. v. J. Russell Derr, Judge, in his Official Capacity

TOPICS

- prisoners rights
- section 1983
- civil rights
- civil procedure

PRACTICE AREAS

- Prisoner civil rights
- In forma pauperis proceedings
- Federal civil procedure

QUESTIONS PRESENTED

1. Whether Plaintiff should be permitted to proceed in forma pauperis despite having no funds to pay an initial partial filing fee.
2. How Plaintiff's filing fee must be collected under the Prison Litigation Reform Act when he cannot pay the initial partial fee.

HOLDINGS

1. A prisoner with no assets or means to pay the initial partial filing fee may proceed in forma pauperis; the initial partial fee requirement is suspended when the prisoner lacks funds.
2. The full \$350.00 filing fee must be collected through monthly installment payments, with the agency having custody of the prisoner forwarding 20 percent of the preceding month's income in months when the account exceeds \$10.00.

KEY QUOTATIONS

"[T]he PLRA makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." (at 1)

"In no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." (at 1)

"the whole of the . . . filing fees are to be collected and paid by the installment method contained in § 1915(b)(2)." (at 1)

FACTUAL BACKGROUND

Plaintiff is a prisoner who filed a civil action and sought leave to proceed in forma pauperis. The court received a certified trust-account statement showing that Plaintiff's account balance was \$0.00, preventing assessment of an initial partial filing fee. The court therefore authorized installment collection of the statutory filing fee and deferred initial review of the claims.

PROCEDURAL HISTORY

Plaintiff filed this action and moved to proceed in forma pauperis. After receiving a certified copy of Plaintiff's trust account statement showing a \$0.00 balance, the court granted IFP status and ordered installment collection under the Prison Litigation Reform Act. The court stated that it would next conduct an initial review of Plaintiff's claims under 28 U.S.C. § 1915(e)(2).

DISPOSITION

other

CASES CITED

- In re Tyler, 110 F.3d 528, 529-30 (8th Cir. 1997)
- Jackson v. N.P. Dodge Realty Co., 173 F. Supp. 2d 951, 957 n. 9 (D. Neb. 2001)

- Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997)

OPINION

Elliott

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

ADAM ELLIOTT SR.,

Plaintiff, 8:25CV731 vs.

ORDER

J. RUSSELL DERR, Judge, in his Official Capacity; Defendant. This matter is before the Court on Plaintiff's Motion for Leave to Proceed in Forma Pauperis ("IFP"). Filing No. 2. The Court has received a certified copy of Plaintiff's trust account statement. Filing No. 10. Plaintiff is permitted to proceed IFP. The Prison Litigation Reform Act ("PLRA") requires prisoner plaintiffs to pay the full amount of the Court's \$350.00 filing fee by making monthly payments to the Court, even if the prisoner is proceeding IFP. 28 U.S.C. § 1915(b). "[T]he PLRA makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." *In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997); *Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951 (D. Neb. 2001). Pursuant to 28 U.S.C. § 1915(b)(1), Plaintiff must pay an initial partial filing fee in the amount of 20 percent of the greater of Plaintiff's average monthly account balance or average monthly deposits for the six months preceding the filing of the complaint. Plaintiff's account balance is \$0.00, and the Court cannot assess an initial partial filing fee. However, as set forth in 28 U.S.C. § 1915(b)(4), "[i]n no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee." When the prisoner is unable to pay the initial partial filing fee due to a lack of funds, the requirement that the initial partial filing fee will be paid at the outset of the case is suspended. See *Jackson*, 173 F. Supp. 2d at 957 n. 9. Instead, "the whole of the . . . filing fees are to be collected and paid by the installment method contained in § 1915(b)(2)." *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). This matter will therefore proceed without payment of the initial partial filing fee as set forth below. IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Leave to Proceed IFP, Filing No. 2, is granted. The filing fee shall be collected and remitted, as funds exist, in the manner set forth in 28 U.S.C. § 1915(b)(2). Until the full filing fee of \$350.00 is paid, the prisoner shall be obligated to pay, and the agency having custody of the prisoner shall forward to the Clerk of the Court, 20 percent of the preceding month's income in such months as the account exceeds \$10.00.
2. The Clerk of the Court shall serve a copy of this order on the appropriate financial officer for Plaintiff's current institution.
3. The next step in Plaintiff's case will be for the Court to conduct an initial

review of Plaintiff's claims to determine whether summary dismissal is appropriate under 28 U.S.C. § 1915(e)(2). The Court will conduct this initial review in its normal course of business. Dated this 21st day of January, 2026. BY THE COURT: s/ Joseph F. Bataillon Senior United States District Judge

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