

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
ILLINOIS

Kevin Birdo, individually and on behalf of K.B. v. Micheala Smith,
J.S., Eric Collins, and Dennis Johnson, Sr.

Birdo · No. 25-cv-1908-JPG · Decided December 9, 2025

SUMMARY

The United States District Court for the Southern District of Illinois denied Kevin Birdo’s motion to proceed in forma pauperis and dismissed his action without prejudice. The court concluded that Birdo failed to provide an affidavit of indigency or amend his complaint to state a plausible claim under the Equal Protection Clause or the Trafficking Victims Protection Reauthorization Act.

CASE DETAILS

COURT	United States District Court for the Southern District of Illinois
WRITING FOR THE COURT	J. Phil Gilbert
JURISDICTION	United States District Court for the Southern District of Illinois
DECIDED	December 9, 2025
DOCKET	25-cv-1908-JPG
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff moved for leave to proceed in forma pauperis. After the Court gave him an opportunity to submit an affidavit of indigency and an amended complaint alleging facts sufficient to state a claim, he submitted neither document. The Court denied leave to proceed in forma pauperis and dismissed the action without prejudice under 28 U.S.C. § 1915(e)(2)(B)(ii).
STANDARD OF REVIEW	At the in forma pauperis screening stage, the Court considered whether the action was clearly frivolous or malicious or failed to state a claim. A claim fails to state a claim when it does not plead enough facts to state a claim for relief that is plausible on its face.
PRECEDENTIAL VALUE	Unknown; memorandum and order from a federal district court with no reported citation.

TOPICS

civil procedure

pleadings

motions to dismiss

equal protection

constitutional law

PRACTICE AREAS

civil procedure

civil rights

constitutional law

QUESTIONS PRESENTED

1. Whether plaintiff established indigency sufficient to proceed in forma pauperis.
2. Whether the action stated a plausible claim for relief under the applicable screening standard.
3. Whether the action should be dismissed without prejudice under 28 U.S.C. § 1915(e)(2)(B)(ii) after plaintiff failed to file the required affidavit and amended complaint.

HOLDINGS

1. Plaintiff was not entitled to proceed in forma pauperis because he failed to submit an affidavit supporting his alleged indigency.
2. The action failed to state a claim because plaintiff did not file an amended complaint containing sufficient facts to make a violation of the Equal Protection Clause or the Trafficking Victims Protection Reauthorization Act plausible.
3. The case was properly dismissed without prejudice under 28 U.S.C. § 1915(e)(2)(B)(ii), and the Clerk was directed to enter judgment.

KEY QUOTATIONS

“enough facts to state a claim to relief that is plausible on its face.”

FACTUAL BACKGROUND

Kevin Birdo sought to proceed in forma pauperis in an action alleging, among other things, an Equal Protection Clause violation and a claim under the Trafficking Victims Protection Reauthorization Act. The Court determined that he had not submitted an affidavit establishing indigency and had not pleaded facts plausibly suggesting a violation of either asserted legal theory. After being given until November 25, 2025, to correct those deficiencies, Birdo filed neither an affidavit nor an amended complaint.

PROCEDURAL HISTORY

The Court previously ordered plaintiff to file an affidavit supporting his indigency and an amended complaint containing sufficient facts to support a claim within the specified deadline. The Court warned that failure to comply would result in dismissal without prejudice. Plaintiff filed neither required document, so the Court denied his in forma pauperis motion and dismissed the case for failure to state a claim.

DISPOSITION

dismissed

CASES CITED

- Neitzke v. Williams, 490 U.S. 319, 325 (1989)
- Corgain v. Miller, 708 F.2d 1241, 1247 (7th Cir. 1983)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982)

OPINION

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS
KEVIN BIRDO, individually and on behalf of K.B., Plaintiff, v. Case No. 25-cv-1908-JPG
MICHEALA SMITH, J.S., ERIC COLLINS, and DENNIS JOHNSON, SR., Defendants.
MEMORANDUM AND ORDER This matter comes before the Court on plaintiff Kevin Birdo's motion for leave to proceed in forma pauperis in this action (Doc.

2). A federal court may permit an indigent party to proceed without pre-payment of fees. 28 U.S.C. § 1915(a)(1). Nevertheless, a court can deny a qualified plaintiff leave to file in forma pauperis or can dismiss a case if the action is clearly frivolous or malicious or fails to state a claim. 28 U.S.C. § 1915(e)(2)(B)(i) & (ii).

The test for determining if an action is frivolous or without merit is whether the plaintiff can make a rational argument on the law or facts in support of the claim. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Corgain v. Miller*, 708 F.2d 1241, 1247 (7th Cir. 1983). An action fails to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

When assessing a petition to proceed in forma pauperis, a district court should inquire into the merits of the plaintiff's claims, and if the court finds them to be frivolous, it should deny leave to proceed in forma pauperis. *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982).

In an order dated October 28, 2025 (Doc. 5), the Court noted that Birdo had not submitted an affidavit in support of his indigency and had not stated facts to plausibly suggest a violation of the Equal Protection Clause or the Trafficking Victims Protection Reauthorization Act, 18 U.S.C. § 1595(a). It gave him until November 25, 2025, to file an affidavit of indigency and an amended complaint stating sufficient facts to support a cause of action over which this Court had jurisdiction.

The Court warned him that, if he failed to file those documents in a timely fashion, the Court would dismiss this case without prejudice for failure to state a claim. Birdo has filed neither document. Accordingly, as it warned it would, the Court DENIES his motion for leave to proceed in forma pauperis (Doc. 2) for lack of indigency and for failure to state a claim for relief that is plausible on its face.

It further DISMISSES this case without prejudice pursuant to § 1915(e)(2)(B)(ii) for failure to state a claim and DIRECTS the Clerk of Court to enter judgment accordingly. IT IS SO ORDERED. DATED: December 9, 2025 s/ J. Phil Gilbert J. PHIL GILBERT DISTRICT JUDGE

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