

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Lawton v. Barajas

Lawton · No. 3:25-cv-00927-JES-AHG · Decided April 29, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Dashawn Lawton’s § 1983 action without prejudice for failure to pay the required filing fee or properly move to proceed in forma pauperis. The court granted Plaintiff 45 days to reopen the case by paying the \$405 fee or filing a compliant IFP motion and declaration.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	James E. Simmons Jr.
JURISDICTION	United States District Court for the Southern District of California
DECIDED	April 29, 2025
DOCKET	3:25-cv-00927-JES-AHG
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff, proceeding pro se and incarcerated, filed a 42 U.S.C. § 1983 civil rights complaint without paying the filing fee or filing a properly supported motion to proceed in forma pauperis. The district court dismissed the action without prejudice and allowed Plaintiff forty-five days to reopen it by paying the fee or filing a compliant IFP motion.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- civil procedure
- prisoners rights
- civil rights
- pleadings

PRACTICE AREAS

- civil procedure
- prisoner civil rights
- in forma pauperis proceedings

QUESTIONS PRESENTED

- Whether the action could proceed when Plaintiff neither paid the filing fee required by 28 U.S.C. § 1914(a) nor filed a properly supported motion to proceed in forma pauperis under 28 U.S.C. § 1915(a).

2. Whether the action should be dismissed without prejudice with an opportunity to cure the filing-fee or IFP deficiency.

HOLDINGS

1. A prisoner civil action cannot proceed unless the plaintiff either prepays the required filing fee or files a properly supported motion to proceed in forma pauperis containing the affidavit and trust-account documentation required by 28 U.S.C. § 1915(a)(1) and (2).
2. Dismissal without prejudice was appropriate because Plaintiff failed to pay the required civil filing and administrative fee and failed to properly move to proceed in forma pauperis.

KEY QUOTATIONS

“Therefore, unless Plaintiff either pays the filing fee “upfront,” Bruce, 577 U.S. at 86, or files a properly supported Motion to Proceed IFP that includes an affidavit that meets the requirements set out in 28 U.S.C. § 1915(a)(1), his case cannot proceed.” (at 3)

“DISMISSES this action without prejudice based on Plaintiff’s failure to pay the \$405 civil filing and administrative fee required by 28 U.S.C. § 1914(a), and his failure to properly move to proceed IFP pursuant to 28 U.S.C. § 1915(a);” (at 4)

FACTUAL BACKGROUND

Plaintiff was incarcerated at Richard J. Donovan Correctional Facility and alleged that two correctional officers destroyed his personal property during a September 2024 cell search. He further alleged that the officers later destroyed legal paperwork and harassed his wife during visitation because he complained. The court did not reach the merits of these civil rights allegations because Plaintiff had not paid the filing fee or properly sought IFP status.

PROCEDURAL HISTORY

Dashawn Lawton filed a civil rights complaint against two correctional officers. Although prison records concerning his trust account were submitted, Plaintiff did not pay the required filing fee and did not personally file a motion and affidavit to proceed in forma pauperis. The court dismissed the action without prejudice, granted forty-five days to cure the filing-fee or IFP deficiency, and directed the Clerk to provide the approved IFP form.

DISPOSITION

dismissed

CASES CITED

- Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007)
- Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999)
- Bruce v. Samuels, 577 U.S. 82, 84 (2016)

- Williams v. Paramo, 775 F.3d 1182, 1185 (9th Cir. 2015)
- Taylor v. Delatoore, 281 F.3d 844, 847 (9th Cir. 2002)
- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir. 2015)
- Andrews v. King, 398 F.3d 1113, 1119 (9th Cir. 2005)
- Rowland v. California Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 214 (1993)
- United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981)
- Jefferson v. United States, 277 F.2d 723, 725 (9th Cir. 1960)
- Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
- Rhodes v. Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010)

OPINION

Lawton v. Barajas

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 DASHAWN LAWTON, Case No.: 3:25-cv-00927-JES-AHG

CDCCR #BT-2102,

12

ORDER DISMISSING CIVIL

Plaintiff,

13 ACTION FOR FAILURE TO PAY

vs. FILING FEES REQUIRED BY

14

28 U.S.C. § 1914(a) AND/OR FOR

J. BARAJAS;

15 FAILURE TO PROPERLY MOVE

F. MANJARREZ,

TO PROCEED IN FORMA

16 Defendants. PAUPERIS PURSUANT TO 17 28 U.S.C. § 1915(a) 18 19 Plaintiff Dashawn
Lawton, currently incarcerated at Richard J. Donovan 20 Correctional Facility (“RJD”) in San
Diego, California, and proceeding pro se, has filed a 21 civil rights complaint pursuant to 42
U.S.C. § 1983. (See ECF No. 1.) Plaintiff alleges 22 two RJD correctional officers destroyed his
personal property during a September 2024 23 cell search and later destroyed his legal paperwork
and harassed his wife during visitation 24 because he complained. (Id. at 2–8.)

25 FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS

26 All parties instituting any civil action, suit or proceeding in a district court of the 27 United
States, except an application for writ of habeas corpus, must pay a filing fee of 28 \$405. See 28

U.S.C. § 1914(a). The action may proceed despite a plaintiff's failure to 1 prepay the entire fee only if he is granted leave to proceed in forma pauperis ("IFP") 2 pursuant to 28 U.S.C. § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 3 2007) ("Cervantes"); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, 4 a prisoner who is granted leave to proceed IFP remains obligated to pay the entire fee in 5 "increments" or "installments," *Bruce v. Samuels*, 577 U.S. 82, 84 (2016); *Williams v. 6 Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015), and regardless of whether his action is 7 ultimately dismissed. See 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 8 847 (9th Cir. 2002).

9 Section 1915(a)(2) requires all persons seeking to proceed without full prepayment 10 of fees to submit an affidavit that includes a statement of all assets possessed and which 11 demonstrates an inability to pay. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th 12 Cir. 2015) (emphasis added). In support of this affidavit, prisoners like Plaintiff must also 13 submit a "certified copy of the trust fund account statement (or institutional equivalent) for 14 . . . the 6-month period immediately preceding the filing of the complaint." 28 U.S.C. 15 § 1915(a) (2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). It is from the certified 16 trust account statement that the Court assesses an initial payment of 20% of (a) the average 17 monthly deposits in the account for the past six months, or (b) the average monthly balance 18 in the account for the past six months, whichever is greater, unless he has no assets. See 19 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution having custody of the 20 prisoner then collects subsequent payments, assessed at 20% of the preceding month's 21 income, in any month in which his account exceeds \$10, and forwards those payments to 22 the Court until the entire filing fee is paid. See 28 U.S.C. § 1915(b)(2); *Bruce*, 577 U.S. at 23 85–86. 24 Plaintiff did not pay the filing fee required to commence a civil action when he filed 25 his Complaint, nor has he filed a Motion to Proceed IFP, which includes both the affidavit 26 required by 28 U.S.C. § 1915(a)(1) and the certified copies of his trust funds account 27 statements required by 28 U.S.C. § 1915(a)(2). While RJD has submitted prison 28 certificates and CDCR printouts of Plaintiff's trust account activity on his behalf, see ECF

1 No. 2, this accounting, unless accompanied by a motion and affidavit submitted by 2 Plaintiff, is insufficient. "The in forma pauperis statute authorizes courts to allow '[1] the 3 commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, 4 or appeal therein, without prepayment of fees and costs or security therefor, by a person 5 who [2] makes affidavit that he is [3] unable to pay such costs or give security therefor.'" 6 *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 214 7 (1993) (quoting 28 U.S.C. § 1915(a)). "Section 1915(a) thus contemplates that the 8 [person] who is entitled to the benefits of the provision will have three characteristics: 9 He will have the capacity to sue or be sued, to make an affidavit, and to be unable to pay 10 court costs." *Id.* "Such affidavit shall [also] state the nature of the action, . . . and affiant's 11 belief that [he] is entitled to redress." 28 U.S.C. § 1915(a)(1). "When a claim of poverty 12 is made under section 1915 'it is proper and indeed

essential for the supporting affidavits 13 to state the facts as to affiant's poverty with some particularity, definiteness and certainty.'" 14 *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)). 16 Therefore, unless Plaintiff either pays the filing fee "upfront," *Bruce*, 577 U.S. at 86, 17 or files a properly supported Motion to Proceed IFP that includes an affidavit that meets 18 the requirements set out in 28 U.S.C. § 1915(a)(1), his case cannot proceed. See 28 U.S.C. 19 § 1914(a); *Cervantes*, 493 F.3d at 1051.

20 CONCLUSION

21 Accordingly, the Court: 22 (1) **DISMISSES** this action without prejudice based on Plaintiff's failure to pay 23 the \$405 civil filing and administrative fee required by 28 U.S.C. § 1914(a), and his failure 24 to properly move to proceed IFP pursuant to 28 U.S.C. § 1915(a); 25 (2) **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order to 26 re-open his case by: (a) prepaying the entire \$405 civil filing and administrative fee 27 required by 28 U.S.C. § 1914(a) in full; or (b) completing and filing a Motion and 28 Declaration in Support of Motion to Proceed IFP that complies with 28 U.S.C. 1 1915(a)(1), (2) and S.D. Cal. CivLR 3.2.b; and 2 (3) **DIRECTS** the Clerk of the Court to provide Plaintiff with a Court-approved 3 "Motion and Declaration in Support of Motion to Proceed IFP" for his use and 4 |inconvenience. Should Plaintiff neither pay the \$405 filing fee in full nor sufficiently 5 complete and file the attached Motion and Declaration to Proceed IFP within 45 days, this 6 action will remained dismissed without prejudice pursuant to 28 U.S.C. § 1914(a), 7 without further Order of the Court.' 8 **IT IS SO ORDERED.** 9 Dated: April 28, 2025 ated: ril 28, A P Xn J, . 12 Honorable James E. Sunmons Jr. 13 United States District Judge 14 15 16 17 18 19 20

21 Plaintiff 1s cautioned that if he chooses to re-open the case by either prepaying the 99 full \$405 civil filing fee, or by submitting a properly supported Motion to Proceed IFP, his Complaint will be subject to an initial review and may be dismissed sua sponte pursuant to 23 U.S.C. § 1915A(b) and/or 28 U.S.C. § 1915(e)(2)(B), regardless of whether he pays the 54 full filing fee at once, or is granted IFP status and is obligated to pay the full filing fee in installments. See *Lopez v. Smith*, 203 F.3d 1122, 1126—27 (9th Cir. 2000) (en banc) (noting 25 || that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte dismiss an 5 in forma pauperis complaint that is frivolous, malicious, fails to state a claim, or seeks 6 damages from defendants who are immune); see also *Rhodes v. Robinson*, 621 F.3d 1002, 27 || 1004 (9th Cir. 2010) (discussing similar screening required by 28 U.S.C. § 1915A of all 28 complaints filed by prisoners "seeking redress from a governmental entity or officer or employee of a governmental entity.").