

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

OPINION

Lawton v. Barajas

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

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

CDCR #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, 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, 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 15 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.”).