

SUPREME COURT OF OKLAHOMA

Smith v. Moore, 2002 OK 49

50 P.3d 215 (Okla. 2002) · No. No. 96,949 · Decided June 11, 2002

SUMMARY

The Oklahoma Supreme Court considers whether a district court order requiring a prisoner to pay a partial filing fee from prison earnings was appealable and whether the court could impose such a fee. The court recast the matter as an original proceeding and held that courts may require partial filing fees and collect them from future balances, but may not require a payment that completely depletes the prisoner's account. Writs of mandamus and prohibition were granted in part and denied in part with instructions.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Winchester, J.; Winchester; Hargrave; Watt; Hodges; Lavender; Summers; Boudreau; Opala; Kauger
JURISDICTION	Oklahoma
DECIDED	June 11, 2002
DOCKET	No. 96,949
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Smith sought review of a district court order assessing \$48 in partial court costs against his prison income and imposing a lien to collect the costs. The Supreme Court treated the filing as an original proceeding for prerogative writs despite the lack of appellate jurisdiction over the interlocutory order.
STANDARD OF REVIEW	The amount of a partial filing fee is reviewed for abuse of discretion; mandamus and prohibition require a clear legal right, a plain legal duty not involving discretion, and no plain and adequate remedy in the ordinary course of law.
PRECEDENTIAL VALUE	published binding Oklahoma Supreme Court opinion
PARTIES	Eugene Smith v. The Honorable Mark A. Moore, District Court Judge

TOPICS

writ of certiorari

appellate jurisdiction

appellate procedure

civil procedure

constitutional law

PRACTICE AREAS

civil procedure

appellate procedure

constitutional law

remedies

statutory interpretation

QUESTIONS PRESENTED

1. Whether the district court's order requiring payment of a partial filing fee and imposing a lien on the prisoner's future income was appealable before final judgment.
2. Whether Oklahoma courts may assess partial filing fees against a prisoner's future account balances and income when the prisoner proceeds in forma pauperis.
3. Whether a court may require a partial filing fee that completely depletes the prisoner's funds for a month.

HOLDINGS

1. An order assessing a partial filing fee and imposing a lien on a prisoner's future prison income is interlocutory and unreviewable before final judgment when it does not terminate the litigation or prevent the prisoner from continuing the case.
2. A court may require a prisoner proceeding in forma pauperis to pay a partial filing fee based on present account balances, monthly income, other assets, and future account balances, and may issue orders necessary to collect the fee.
3. A court may not order a partial filing fee for any month that completely depletes the prisoner's account.

KEY QUOTATIONS

“The order in the present case is not a final order because it does not conclude the litigation; it merely requires the payment of a filing fee.” (50 P.3d at 216)

“The amount of the partial filing fee is within the discretion of the trial court.” (50 P.3d at 217)

“The clear legal duty is that the court may not order a partial filing fee equal to all of Smith's funds.” (50 P.3d at 217)

FACTUAL BACKGROUND

Eugene Smith, an incarcerated person, sought to proceed in forma pauperis while pursuing litigation. Although he had only \$0.24 in his account when he applied, the district court found that he received \$24 per month in prison 'gang pay' and assessed \$48 in court costs. The court allowed him to proceed as a pauper but authorized a lien on his future prison income to collect the costs.

PROCEDURAL HISTORY

Smith filed an application for writ of mandamus and requested pauper status. The Blaine County District Court found that he received \$24 per month in prison 'gang pay,' assessed \$48 in court costs, allowed him to proceed as

a pauper, and authorized a lien against his future prison income unless he dismissed the action. The Supreme Court held that the order was interlocutory and unappealable, but recast the matter as an original proceeding and granted mandamus and prohibition in part, with instructions.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The district court shall determine the filing fee consistently with Foust and the Supreme Court's instructions, shall not require a fee equal to all of Smith's funds, and shall allow Smith an opportunity to object to the fee as determined. The writs of prohibition and mandamus were granted in part and denied in part.

CASES CITED

- Foust v. Pearman, 1992 OK 135, 850 P.2d 1047
- Page v. Sherman, 1955 OK 328, 290 P.2d 132
- LCR, Inc. v. Linwood Properties, 1996 OK 73, 918 P.2d 1388
- First Nat. Bank and Trust Co. of Ada v. Arles, 1991 OK 78, 816 P.2d 537
- Cumbey v. State, 1985 OK 36, 699 P.2d 1094
- Oklahoma Gas & Electric v. District Court, 1989 OK 158, 784 P.2d 61
- Mahorney v. Moore, 2002 OK 39, 50 P.3d 1128