

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Swenson v. Kuehni

Swenson · No. 3:25-cv-01398-RBM-MSB · Decided July 10, 2025

OPINION

Swenson v. Kuehni

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 MARY SWENSON, Case No.: 3:25-cv-01398-RBM-MSB 12 Plaintiff, ORDER: 13 v.

(1) GRANTING PLAINTIFF’S

14 JOHN KUEHNI and BLEND REALTY,

MOTION TO PROCEED IN FORMA

15 Defendants. PAUPERIS [Doc. 2] 16

(2) SCREENING COMPLAINT

17 PURSUANT TO 28 U.S.C. § 1915(e)(2)(B) [Doc. 1] 18 19 20 On June 2, 2025, Plaintiff Mary Swenson (Scott-Duren) (“Plaintiff”) filed a 21 Complaint for “loss of ID, substantive property rights, 63 year familial trafficking” against 22 Defendants John Kuehni and Blend Realty.1 (Doc. 1 at 1.) Regarding Defendant Blend 23 Realty, Plaintiff alleges, “I had property in San Diego with 953 liens on 3810 Cadden Way, 24 San Diego, CA 92117 on Mary Scott Living Trust my birthname opposed by Blend 25 26 27 1 Plaintiff includes the Latin abbreviation “et al.” in the caption of her Complaint but never specifically identifies the remaining defendants. The Court will proceed as if Defendants 28 1 Realty.” (Id. at 2.) Regarding Defendant John Kuehni, Plaintiff alleges, “Kuehni filed for 2 default eviction, took \$77k in sanction, \$23k in fees and fines.” (Id.) Plaintiff then requests 3 that the Court “[e]vict any and all criminal from any ownership by ... Blend ... fraud due 4 to conversion.” (Id. at 3.) Plaintiff also requests that the Court “[r]emove fees, sanctions, 5 fines due to larceny and remitteurs [sic] or appeals issued.”2 (Id.) 6 The same day, Plaintiff filed an Application to Proceed in District Court Without 7 Prepaying Filing Fees or Costs (“IFP Application”). (Doc. 2.) In her IFP Application, 8 Plaintiff states that she does not have any source of income other than \$1,750 in disability 9 and \$23 in food stamps. (Id. at 1–2.) Plaintiff also states that she has negative balances in 10 her checking and savings accounts and that someone “stole all contents” of “both MN/CA 11 home.” (Id. at 2–3.) Plaintiff states that she has two children that rely on her or her spouse 12 for support and that she has \$2,555 per month in monthly expenses. (Id. at 4–5.) 13 Lastly, Plaintiff filed a letter directed to the “San Diego []

Clerk,” which requests 14 several “corrections” and “electronic file permission by the [C]ourt,” (Doc. 3 at 1); a 15 Request for Appointment of Counsel (Doc. 4); a “Motion to Correct and Restore ID with 16 Property and TRO Dismissal” (Doc. 10); numerous notices (Docs. 5–8); and a Declaration 17 of Service (Doc. 9). 18 For the reasons discussed below, Plaintiff’s IFP Application (Doc. 2) is GRANTED, 19 but Plaintiff’s Complaint (Doc. 1) is DISMISSED with leave to amend. Additionally, 20 Plaintiff’s requests for “corrections” and “electronic file permission by the [C]ourt” (Doc. 21 3 at 1); Plaintiff’s Request for Appointment of Counsel (Doc. 4); and Plaintiff’s “Motion 22 to Correct and Restore ID with Property and TRO Dismissal” (Doc. 10) are DENIED AS 23 MOOT.

24 I. DISCUSSION

25 A motion to proceed in forma pauperis (“IFP”) presents two issues for the Court’s 26 27 2 Plaintiff’s remaining allegations do not concern Defendant John Kuehni or Defendant 28 1 consideration. First, the Court must determine whether an applicant properly shows an 2 inability to pay the \$4053 civil filing fee required by this Court. See 28 U.S.C. §§ 1914(a), 3 1915(a). To that end, an applicant must provide the Court with a signed affidavit “that 4 includes a statement of all assets[,] which shows [an] inability to pay initial fees or give 5 security.” S.D. Cal. Civ. R. 3.2(a). Second, § 1915(e)(2)(B)(ii) requires the Court to 6 evaluate whether an applicant’s complaint sufficiently states a claim upon which relief may 7 be granted. See *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (“1915(e) not only 8 permits but requires a district court to dismiss an [IFP] complaint that fails to state a 9 claim.”). The Court addresses each issue in turn.

10 A. Plaintiff’s IFP Application 11 An applicant need not be completely destitute to proceed IFP, but he must adequately 12 prove his indigence. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 13 (1948). An adequate affidavit should “allege[] that the affiant cannot pay the court costs 14 and still afford the necessities of life.” *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th

15 Cir. 2015) (citing *Adkins*, 335 U.S. at 339); see also *United States v. McQuade*, 647 F.2d 16 938, 940 (9th Cir. 1981) (an adequate affidavit should state supporting facts “with some 17 particularity, definiteness and certainty”) (citation omitted). No exact formula is “set forth 18 by statute, regulation, or case law to determine when someone is poor enough to earn IFP 19 status.” *Escobedo*, 787 F.3d at 1235. Consequently, courts must evaluate IFP requests on 20 a case-by-case basis. See *id.* at 1235–36 (declining to implement a general benchmark of 21 “twenty percent of monthly household income”); see also *Cal. Men’s Colony v. Rowland*, 22 939 F.2d 854, 858 (9th Cir. 1991) (requiring that district courts evaluate indigency based 23 24 25 3 In addition to the \$350 statutory fee, civil litigants typically must pay an additional administrative fee of \$55. See 28 U.S.C. § 1914(a); United States Courts, District Court 26 Miscellaneous Fee Schedule § 14 (effective Dec. 1, 2023), 27 <https://www.uscourts.gov/services-forms/fees/district-court-miscellaneous-fee-schedule>. However, the additional \$55 administrative fee does not apply to persons granted leave to 28 1 upon available facts and by exercise of their “sound discretion”),

rev'd on other grounds, 2 506 U.S. 194 (1993); *Venable v. Meyers*, 500 F.2d 1215, 1216 (9th Cir. 1974) (“The 3 granting or denial of leave to proceed [IFP] in civil cases is within the sound discretion of 4 the district court.”). 5 Here, Plaintiff’s monthly expenses (\$2,555) exceed her monthly income (\$1,773). 6 (Doc. 2 at 12, 4–5.) Plaintiff also has a net negative balance in her checking and savings 7 account. (Id. at 2.) Accordingly, the Court is persuaded that Plaintiff cannot pay the filing 8 fee and “still afford the necessities of life.” *Escobedo*, 787 F.3d at 1234 (citation omitted). 9 The Court therefore exercises its broad discretion and GRANTS Plaintiff’s IFP 10 Application. See *Cal. Men’s Colony*, 939 F.2d at 858 (requiring that district courts exercise 11 their “sound discretion”). 12 B. Screening Under 28 U.S.C. § 1915(e) 13 As discussed above, every complaint filed pursuant to the IFP provisions of 28 14 U.S.C. § 1915 is subject to mandatory screening by the Court under § 1915(e)(2)(B). 15 *Lopez*, 203 F.3d at 1127. Under this provision, the Court must dismiss complaints that are 16 (1) frivolous or malicious, (2) fail to state a claim on which relief may be granted, or (3) 17 seek monetary relief from defendants who are immune from such relief. See 28 U.S.C. 18 § 1915(e)(2)(B). 19 1. Failure to State a Claim 20 “The standard for determining whether a plaintiff has failed to state a claim upon 21 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of 22 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watson v. Carter*, 668 F.3d 23 1108, 1112 (9th Cir. 2012). Rule 12(b)(6) requires a complaint to “contain sufficient 24 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” 25 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). “[O]ur ‘obligation’ 26 remains, ‘where the petitioner is pro se, particularly in civil rights cases, to construe the 27 pleadings liberally and to afford the petitioner the benefit of any doubt.’” *Hebbe v. Pliler*, 28 627 F.3d 338, 342 (9th Cir. 2010) (quoting *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th

1 Cir. 1985)). However, the Court may not “supply essential elements of claims that were 2 not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th 3 Cir. 1982).

4 Regarding Defendant Blend Realty, Plaintiff alleges she “had property in San Diego 5 with 953 liens on 3810 Cadden Way, San Diego, CA 92117 on Mary Scott Living Trust 6 my birthname opposed by Blend Realty.” (Doc. 1 at 2.) While Plaintiff seemingly 7 indicates a dispute with Blend Realty regarding the property at 3810 Cadden Way, San 8 Diego, CA 92117, the Court cannot infer the nature of the dispute or any specific claim 9 against Blend Realty from this allegation alone. Accordingly, Plaintiff has not stated “a 10 claim to relief that is plausible on its face” against Defendant Blend Realty. See *Ashcroft*, 11 556 U.S. at 678. 12 Similarly, Plaintiff alleges that Defendant John Kuehni “filed for default eviction, 13 took \$77k in sanction, \$23k in fees and fines.” (Doc. 1 at 2.) As before, the Court cannot 14 infer the nature of Plaintiff’s dispute with Defendant John Kuehni or identify any specific 15 claim against Defendant John Kuehni from this allegation alone. Further, to the extent that 16 Plaintiff wishes to challenge prior eviction proceedings, the Court is concerned that it does 17 not have subject matter jurisdiction over any

such dispute. See *Quitiquit v. Robinson* 18 Rancheria Citizens Bus. Council, No. C 11-0983 PJH, 2011 WL 2607172, at *8 (N.D. Cal.

19 July 1, 2011) (finding that an eviction or unlawful detainer action is a civil action brought pursuant to state law and does not provide a basis for federal subject matter jurisdiction). 21 Accordingly, Plaintiff has not stated “a claim to relief that is plausible on its face” against 22 Defendant John Kuehni. See *Ashcroft*, 556 U.S. at 678.

23 II. CONCLUSION

24 Based on the foregoing, Plaintiff’s IFP Application (Doc. 2) is GRANTED, but 25 Plaintiff’s Complaint (Doc. 1) is DISMISSED with leave to amend. Plaintiff may file an 26 amended Complaint on or before August 6, 2025. If Plaintiff declines to file an amended 27 Complaint, her case will be closed. Additionally, Plaintiff’s requests for “corrections” and 28 “electronic file permission by the [C]ourt” (Doc. 3 at 1); Plaintiff’s Request for 1 || Appointment of Counsel (Doc. 4); and Plaintiff’s “Motion to Correct and Restore ID with 2 Property and TRO Dismissal” (Doc. 10) are DENIED AS MOOT. See e.g., *Dudash v. 3 || Ulloa*, Case No.: 3:25-cv-1269-CAB-BLM, 2025 WL 1663395, at *2 (S.D. Cal. June 11, 4 2025) (denying a pro se plaintiff’s motion for leave to electronically file documents as 5 ||moot upon the dismissal of his complaint). Plaintiff may re-file these motions with any 6 ||amended Complaint. However, Plaintiff is cautioned that all filings must comply with the 7 || Federal Rules of Civil Procedure, the Southern District of California’s Local Rules, and 8 Court’s Chambers Rules. 9 IT IS SO ORDERED. 10 DATE: July 10, 2025 Pe Rast Mert °

D ON. RUTH BERMBDEZ MONTENEGRO

UNITED STATES DISTRICT JUDGE

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