

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH
DAKOTA, SOUTHERN DIVISION

Moses Bob Pessima v. Antionette Katumu Pessima, born Antoinette
Katumu Anderson, and South Dakota Division of Child Support

No. 4:25-CV-04240-CCT (D.S.D. May 19, 2026) · No. No. 4:25-CV-04240-CCT · Decided May 19, 2026

SUMMARY

The United States District Court for the District of South Dakota granted Moses Bob Pessima leave to proceed in forma pauperis and screened his pro se complaint under 28 U.S.C. § 1915(e)(2). The court dismissed without prejudice his claims against the South Dakota Division of Child Support on Eleventh Amendment immunity grounds and dismissed his claims against Antionette Katumu Pessima for failure to state a claim, including failure to plead fraud with particularity. The court entered the order on May 19, 2026.

CASE DETAILS

COURT	United States District Court for the District of South Dakota, Southern Division
WRITING FOR THE COURT	Camela C. Theeler
JURISDICTION	United States District Court for the District of South Dakota, Southern Division
DECIDED	May 19, 2026
DOCKET	No. 4:25-CV-04240-CCT
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed a pro se civil-rights and fraud complaint and moved for leave to proceed in forma pauperis. The district court granted in forma pauperis status and screened the complaint under 28 U.S.C. § 1915(e)(2)(B), dismissing all claims without prejudice.
STANDARD OF REVIEW	On in forma pauperis screening, the court accepted well-pleaded factual allegations as true, liberally construed the pro se complaint, and determined whether the claims were frivolous or malicious, failed to state a claim, or sought monetary relief from an immune defendant under 28 U.S.C. § 1915(e)(2)(B).
PRECEDENTIAL VALUE	unpublished district court order; limited persuasive value

PARTIES

Moses Bob Pessima v. Antionette Katumu Pessima, born Antoinette Katumu Anderson, South Dakota Division of Child Support

TOPICS

section 1983 eleventh amendment immunity subject matter jurisdiction civil procedure family law

PRACTICE AREAS

civil rights federal civil procedure family law sovereign immunity

QUESTIONS PRESENTED

1. Whether Pessima should be permitted to proceed in forma pauperis based on his financial affidavit.
2. Whether the South Dakota Division of Child Support was immune from suit under the Eleventh Amendment and therefore subject to dismissal under 28 U.S.C. § 1915(e)(2)(B).
3. Whether Pessima stated a claim under 42 U.S.C. § 1983 against his former wife by adequately alleging state action or joint action with state actors.
4. Whether Pessima pleaded his fraud claims with the particularity required by Federal Rule of Civil Procedure 9(b).
5. Whether the court had subject-matter jurisdiction over the fraud claims against the former wife.

HOLDINGS

1. A plaintiff who demonstrates insufficient funds to pay the filing fee may be granted leave to proceed in forma pauperis, and Pessima's financial affidavit established that he qualified.
2. The South Dakota Division of Child Support, as a division of the South Dakota Department of Social Services and an arm of the State of South Dakota, is protected by Eleventh Amendment immunity from suit under § 1983 absent a valid waiver; Pessima's claims against it were dismissed without prejudice.
3. Pessima failed to state a § 1983 claim against his former wife because he did not allege that she acted under color of state law or participated in joint action with state actors.
4. Pessima failed to plead his fraud claims with the particularity required by Federal Rule of Civil Procedure 9(b), so those claims were dismissed without prejudice.
5. The court declined to allow amendment of the fraud claims because Pessima did not establish either diversity jurisdiction or federal-question jurisdiction over claims concerning state child-support payments.

KEY QUOTATIONS

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” (Claims Against Antoinette Pessima)

“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.”
(Claims Against Antoinette Pessima)

FACTUAL BACKGROUND

Pessima alleged that he and Antionette Pessima were married, had one child, and later divorced, with Antionette receiving legal physical custody. He alleged that Antionette falsely reported the start date of his child-support obligation and that the defendants thereby caused financial, licensing, immigration, and other losses. He asserted Fourteenth Amendment equal-protection and liberty or property claims, as well as fraud claims, against Antionette and the South Dakota Division of Child Support.

PROCEDURAL HISTORY

Pessima filed a complaint asserting Fourteenth Amendment equal-protection and fraud-related claims arising from alleged child-support calculations and events involving his former wife. He also filed a motion to proceed in forma pauperis. After reviewing his financial affidavit and screening the complaint, the court granted the motion and dismissed the claims against the South Dakota Division of Child Support and Antionette Pessima without prejudice.

DISPOSITION

other

CASES CITED

- Lee v. McDonald's Corp., 231 F.3d 456, 459 (8th Cir. 2000)
- Williams v. McKenzie, 834 F.2d 152, 154 (8th Cir. 1987)
- Cross v. Gen. Motors Corp., 721 F.2d 1152, 1157 (8th Cir. 1983)
- Martin-Trigona v. Stewart, 691 F.2d 856, 857 (8th Cir. 1982) (per curiam)
- Key v. Does, 217 F. Supp. 3d 1006, 1007 (E.D. Ark. 2016)
- Est. of Rosenberg v. Crandell, 56 F.3d 35, 36 (8th Cir. 1995)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam)
- Bediako v. Stein Mart, Inc., 354 F.3d 835, 839 (8th Cir. 2004)
- Martin v. Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985)
- Ellis v. City of Minneapolis, 518 F. App'x 502, 504 (8th Cir. 2013) (per curiam)
- Williams v. Willits, 853 F.2d 586, 588 (8th Cir. 1988)
- Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56 (2007)
- Beavers v. Lockhart, 755 F.2d 657, 663 (8th Cir. 1985)
- Abdullah v. Minnesota, 261 F. App'x 926, 927 (8th Cir. 2008) (per curiam)
- Braden v. Wal-Mart Stores, Inc., 588 F.3d 585, 594 (8th Cir. 2009)

- Cory v. White, 457 U.S. 85, 90-91 (1982)
- Greenwood v. Ross, 778 F.2d 448, 453 (8th Cir. 1985)
- Laje v. R.E. Thomason Gen. Hosp., 665 F.2d 724, 727 (5th Cir. 1982)
- Doe v. Nebraska, 345 F.3d 593, 597 (8th Cir. 2003)
- Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 n.1 (1985)
- Henley v. Brown, 686 F.3d 634, 640 (8th Cir. 2012)
- Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)
- West v. Atkins, 487 U.S. 42, 48 (1988)
- Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001)
- Dennis v. Sparks, 449 U.S. 24, 27-28 (1980)
- Mershon v. Beasley, 994 F.2d 449, 451 (8th Cir. 1993)
- Manis v. Sterling, 862 F.2d 679, 681 (8th Cir. 1988)
- BJC Health Sys. v. Columbia Cas. Co., 478 F.3d 908, 917 (8th Cir. 2007)
- United States ex rel. Costner v. URS Consultants, Inc., 317 F.3d 883, 888 (8th Cir. 2003)
- Smith v. Humphrey, No. 8:24CV271, 2025 WL 1531694, at *3 (D. Neb. May 29, 2025)
- United States v. Afremov, 611 F.3d 970, 975 (8th Cir. 2010)
- Badgerow v. Walters, 596 U.S. 1, 8 (2022)
- Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373 (1978)