

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Bonilla v. Bashant

Bonilla · No. 3:25-cv-21-RSH-SBC · Decided February 26, 2025

OPINION

Bonilla v. Bashant

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 STEVEN WAYNE BONILLA, Case No.: 3:25-cv-21-RSH-SBC 12 Plaintiff,

ORDER DISMISSING CIVIL

13 v. ACTION FOR FAILURE TO PAY

FILING FEE REQUIRED BY

14 CYNTHIA BASHANT, JILL L. 28 U.S.C. 1914(a)

BARTRICK, JILL L. BURKHARDT,

15

B.A.S., JOHN DOE 1-1000, COURT

16 CLERKS,

17 Defendants. [ECF Nos. 1-3] 18 19 Plaintiff Steven Wayne Bonilla (“Plaintiff”), currently
incarcerated at the California 20 Medical Facility and proceeding pro se, has filed a civil action
pursuant to 42 U.S.C. 21 § 1983, along with a Request for Judicial Notice and a Motion
Requesting Summary 22 Judgment. See ECF Nos. 1-3.1 Plaintiff has not filed a Motion to
Proceed In Forma 23 24 25 1 Plaintiff has since also filed an additional document entitled
“Disqualification of Judge For Committing Fraud Upon the Court,” in which he states that the
undersigned, 26 along with United States District Judge Andrew G. Schopler and United States
Magistrate 27 Judge Steve B. Chu, “are disqualified due to committing fraud upon the Court”
asserting that “[i]n this case, the judge failed/refused to pronounce the judgment void or prove 28
1 Pauperis (“IFP”) in this matter, nor has he paid the initial civil filing fee required by 28 2 U.S.C.
§ 1914(a). For the reasons explained below, the Court DISMISSES the case and 3 DENIES AS
MOOT the request for judicial notice and motion requesting summary 4 judgment.

5 I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS

6 Any person filing a civil case such as this one must pay a filing fee of \$405. See 28 7 U.S.C. §
1914(a).2 The case may go forward without the plaintiff paying the entire filing 8 fee, though, if
the court grants him permission to proceed in forma pauperis—which means 9 as a person without

the money or resources to pay the filing fee. See *Andrews v. Cervantes*, 10 493 F.3d 1047, 1052 (9th Cir. 2007) (“*Cervantes*”); cf. *Hymas v. U.S. Dep’t of the Interior*, 11 73 F.4th 763, 765 (9th Cir. 2023) (“[W]here [an] IFP application is denied altogether, 12 Plaintiff’s case [cannot] proceed unless and until the fee[s] [a]re paid.”). 13 The statute that sets out the rules for this is 28 U.S.C. § 1915(a). Section 1915(a)(2) 14 requires all persons who want to pursue a case without paying the filing fee to file a 15 document called an affidavit. That affidavit must include a statement of all assets, or things 16 17 this document to be a motion for recusal pursuant to 28 U.S.C. §§ 144 and 455. Yet, the 18 standard for recusal is “‘whether a reasonable person with knowledge of all of the facts 19 would conclude that the judge’s impartiality might reasonably be questioned.’” *Mayes v. Leipziger*, 729 F.2d 605, 607 (9th Cir. 1984) (quoting *United States v. Nelson*, 718 F.2d 20 315, 321 (9th Cir. 1983)); see also *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 21 1986). A judge’s previous adverse ruling alone is not sufficient for recusal. See *Nelson*, 718 F.2d at 321. “While a judge’s consideration of a motion for recusal must take all facts 22 provided as true for the purpose of ruling on their legal sufficiency, the court need not 23 accept conclusory speculations that lack any factual support.” *United States v. Bell*, 79 F. Supp. 2d 1169, 1173 (E.D. Cal. 1999). Plaintiff has not presented any evidence of judicial 24 bias other than his conclusory statement which lacks any factual support. Thus, the Court 25 finds recusal is not warranted. 26 2 In addition to the \$350 statutory fee, civil plaintiffs must pay an additional 27 administrative fee of \$55. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14). The additional \$55 administrative fee does not 28 1 of value, the plaintiff possesses and must demonstrate the plaintiff’s inability to pay the 2 filing fee. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015). This allows 3 the Court to evaluate the plaintiff’s ability to pay the filing fee. 4 Plaintiffs who are imprisoned at the time they file their civil case must submit 5 another document as well, called a “trust fund account statement.” The Prison Litigation 6 Reform Act (“PLRA”) requires imprisoned plaintiffs to submit this “certified copy of the 7 trust fund account statement (or institutional equivalent) for . . . the 6-month period 8 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. 9 King*, 398 F.3d 1113, 1119 (9th Cir. 2005). “While the previous version of the IFP statute 10 granted courts the authority to waive fees for any person ‘unable to pay[,]’ ... the PLRA 11 amended the IFP statute to include a carve-out for prisoners: under the current version of 12 the IFP statute, ‘if a prisoner brings a civil action or files an appeal in forma pauperis, the 13 prisoner shall be required to pay the full amount of a filing fee.’” *Hymas*, 73 F.4th at 767 14 (quoting 28 U.S.C. § 1915(b)(1)). Section 1915(b) “provides a structured timeline for 15 collecting this fee.” *Id.* (citing 28 U.S.C. § 1915(b)(1)-(2)). 16 Plaintiff has not paid the \$405 filing and administrative fee required to begin this 17 civil action. Plaintiff also has not submitted a properly supported Motion to Proceed IFP. 18 See *Escobedo*, 787 F.3d at 1234. Therefore, his case cannot go forward. See 28 U.S.C. 19 § 1914(a).

20 II. LEAVE TO PROCEED IFP

21 Even if Plaintiff had filed a Motion to Proceed IFP, the Court finds he is not entitled 22 to do so in this action for the reasons set forth below. 23 A. Standard of Review 24 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa Cnty. Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). Prisoners, like Plaintiff, however, “face 26 an additional hurdle.” *Id.* In addition to requiring prisoners to “pay the full amount of a 27 filing fee” in installments for the suits or appeals they launch, see *Bruce v. Samuels*, 577 28 U.S. 82, 85 (2016) (citing 28 U.S.C. § 1915(b) (1)-(2), *Williams v. Paramo*, 775 F.3d 1182, 1 1185 (9th Cir. 2015), the PLRA also amended Section 1915 to preclude the privilege to 2 proceed IFP: 3 . . . if [a] prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United 4 States that was dismissed on the grounds that it is frivolous, malicious, or fails 5 to state a claim upon which relief can be granted, unless the prisoner is under imminent danger of serious physical injury. 6 7 28 U.S.C. § 1915(g). This subdivision is commonly known as the “PLRA’s ‘three strikes’ 8 rule.” *Washington v. Los Angeles Cnty. Sheriff’s Dep’t*, 833 F.3d 1048, 1054 (9th Cir. 9 2016). “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP.” 10 *Andrews*, 398 F.3d at 1116 n.1. The PLRA furthers “the congressional goal of reducing 11 frivolous prisoner litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th 12 Cir. 1997).

13 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which 14 were dismissed on the ground that they were frivolous, malicious, or failed to state a claim,” 15 *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the district court 16 styles such dismissal as a denial of the prisoner’s application to file the action without 17 prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008). 18 When courts “review a dismissal to determine whether it counts as a strike, the style of the 19 dismissal or the procedural posture is immaterial. Instead, the central question is whether 20 the dismissal ‘rang the PLRA bells of frivolous, malicious, or failure to state a claim.’” *El-Shaddai v. Zamora*, 833 F.3d 1036, 1042 (9th Cir. 2016) (quoting *Blakely v. Wards*, 738 22 F.3d 607, 615 (4th Cir. 2013)). 23 Once a prisoner has accumulated three strikes, he is prohibited by Section 1915(g) 24 from pursuing any other IFP action in federal court unless he can show he is facing 25 “imminent danger of serious physical injury.” See 28 U.S.C. § 1915(g); *Cervantes*, 493 26 F.3d at 1051-52 (noting Section 1915(g)’s exception for IFP complaints which “make[] a 27 plausible allegation that the prisoner faced ‘imminent danger of serious physical injury’ at 28 the time of filing”). In addition to being “imminent,” that danger must also be “both fairly 1 traceable to unlawful conduct alleged in [the] complaint and redressable by the court.” *Ray 2 v. Lara*, 31 F.4th 692, 701 (9th Cir. 2022). 3 B. Discussion 4 The Court has reviewed Plaintiff’s Complaint and finds that it does not contain any 5 “plausible allegations” to suggest that he “faced ‘imminent danger of serious physical 6 injury’ at the time of filing.” *Cervantes*, 493 F.3d at 1055 (quoting 28 U.S.C. § 1915(g)). 7 Instead, Plaintiff asserts he is “[r]equesting relief from a void judgment and malicious

8 prosecution,” contends there was fraud upon the Court due to the failure to pronounce the 9 judgment void and asserts that he “was treated differently than others by the judge 10 discriminating against him, by the judge conspiring with or among others not to perform 11 their official duty to grant relief for malicious prosecution.” ECF No. 1 at 4. 12 Plaintiff has not moved to proceed IFP in this case; nevertheless, the Court finds it 13 would be futile for him to do so. While Defendants typically carry the initial burden to 14 produce evidence demonstrating a prisoner is not entitled to proceed IFP, *Andrews*, 398 F.3d at 1119, “in some instances, the district court docket may be sufficient to show that a 16 prior dismissal satisfies at least one of the criteria under § 1915(g) and therefore counts as 17 a strike.” *Id.* at 1120. That is true here. 18 Based on the dockets of many court proceedings available on PACER,³ this Court 19 finds that Plaintiff Steven Wayne Bonilla, identified as CDCR #J-48500, while 20 incarcerated, has had dozens of prisoner civil actions or appeals dismissed on the grounds 21 that they were frivolous, malicious, or failed to state a claim upon which relief may be 22 23 24 3 A court may take judicial notice of its own records, see *Molus v. Swan*, No. 3:05-cv- 25 00452-MMA-WMc, 2009 WL 160937, at *2 (S.D. Cal. Jan. 22, 2009) (citing *United States v. Author Servs.*, 804 F.2d 1520, 1523 (9th Cir. 1986)); *Gerritsen v. Warner Bros. Entm’t 26 Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015), and ““may take notice of proceedings 27 in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.”” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 28 1 granted. See *In re Steven Bonilla*, 2012 WL 216401, at *1 (N.D. Cal. Jan. 24, 2012) (noting 2 Plaintiff’s litigation history in the Northern District of California, including the dismissal 3 of 34 pro se civil rights actions between June 1 and October 31, 2011 alone, which were 4 dismissed “because the allegations in [his] complaints d[id] not state a claim for relief 5 under § 1983”); *id.* at *3 (“The following five actions are DISMISSED without prejudice 6 and without leave to amend for failure to state a claim upon which relief may be granted: 7 *Bonilla v. Superior Court of Alameda County*, C 11-6306; *Bonilla v. Alameda County 8 District Attorney’s Office*, C 11-6307; *Bonilla v. California Supreme Court*, C 12-0026; 9 *Bonilla v. Cullen*, C 12-0027; *Bonilla v. California Supreme Court*, C 12-0206.”); *id.* at *3 10 n.1 (“The Court recently informed Plaintiff that, in accordance with 28 U.S.C. § 1915(g), 11 he no longer qualifies to proceed in forma pauperis in any civil rights action.”) (citing *In 12 re Steven Bonilla*, Nos. C 11-3180, et seq. CW (PR), Order of Dismissal at 6:23-7:19). 13 Accordingly, because Plaintiff has, while incarcerated, accumulated far more than 14 the three “strikes” permitted by Section 1915(g), and he fails to make any plausible 15 allegation that he faced imminent danger of serious physical injury at the time he filed this 16 case, he is not entitled to the privilege of proceeding IFP. See *Cervantes*, 493 F.3d at 1055; 17 *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999) (noting that 28 U.S.C. § 1915(g) 18 “does not prevent all prisoners from accessing the courts; it only precludes prisoners with 19 a history of abusing the legal system from continuing to abuse it while enjoying IFP 20 status”). When a prisoner-litigant “has accumulated three prior dismissals on statutorily 21 enumerated grounds[,] . . . a court may

not afford him in forma pauperis status with respect to his additional civil actions.” *Coleman v. Tollefson*, 575 U.S. 532, 534 (2015). This is because “court permission to proceed IFP is itself a matter of privilege and not right.” *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984).

III. CONCLUSION

Accordingly, the Court:

1. DISMISSES this case based on Plaintiff’s failure to pay the civil filing fee required by 28 U.S.C. § 1914(a);
2. DENIES AS MOOT Plaintiffs request for judicial notice [ECF No. 2] and his motion requesting summary judgment [ECF No. 3];
3. CERTIFIES that an IFP appeal from this Order would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3); and
4. DIRECTS the Clerk of the Court to close the case and accept no further documents for filing in this matter, except a timely-filed Notice of Appeal, which this Court CERTIFIES would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED. Dated: February 26, 2025
Hon. Robert S. Huie
United States District Judge