

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Mario Macellari v. Scott Sherwood

Macellari · No. Civil No. 25-5780 · Decided February 11, 2026

SUMMARY

The District of New Jersey granted Mario Macellari's application to proceed in forma pauperis after finding that he could not pay the filing fee. The court dismissed his complaint without prejudice for failing to establish subject matter jurisdiction and permitted him to reopen the case by filing an amended complaint within thirty days.

OPINION

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CAMDEN VICINAGE
MARIO MACELLARI, Plaintiff, Civil No. 25-5780 v. MEMORANDUM ORDER SCOTT
SHERWOOD, Defendant. RENÉE MARIE BUMB, Chief United States District Judge Pro se
Plaintiff Mario Macellari asks this Court to allow him to proceed in forma pauperis (IFP) so he
can sue Defendant Scott Sherwood, Atlantic County's Chief Public Defender, who appears to be
representing him in an ongoing criminal prosecution.

28 U.S.C. § 1915 allows federal courts to waive the prepayment of court fees if the litigant "is
unable to pay such fees." 28 U.S.C. § 1915(a). Once a court grants an IFP application, § 1915
requires the Court to screen the litigant's complaint to ensure, among other things, it states a claim
and that the lawsuit is not frivolous or malicious. Id. § 1915(e)(2)(B).

Third Circuit courts only grant leave to proceed IFP "based on a showing of indigence." *Douris v.*
Newtown Borough, Inc., 207 F. App'x 242, 243 (3d Cir. 2006). While IFP status is not reserved
solely for the "absolutely destitute[.]" the litigant "must establish that he is unable to pay the costs
of his suit." *Hurst v. Shalk*, 659 F. App'x 133, 134 (3d Cir. 2016) (quoting *Walker v. People*
Express Airlines, Inc., 886 F.2d 598, 601 (3d Cir.

1989)). The litigant seeking IFP status shoulders the burden "to provide the [Court] with the
financial information it need[s] to make a determination as to whether he qualifie[s] for [IFP]
status." *Freeman v. Edens*, 2007 WL 2406789, at *1 (D.N.J. Aug. 17, 2007) (first, second, and
third alterations in original) (citation and internal quotation marks omitted).

Here, after considering Macellari's Affidavit of Poverty and Account Certification, and the
accompanying Offender Management System account record, the Court finds that he cannot pay
the Court's filing fees. [Docket No. 1-1.]

Thus, the Court grants his IFP application. Still, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(ii), the Court screens Macellari's Complaint to ensure he states a claim for relief and that his lawsuit is not "frivolous or malicious." Macellari's pro se status does not relieve him of his obligation to allege enough facts in the Complaint to support these claims.

Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 245 (3d Cir. 2013). While unclear, Macellari appears to raise claims against Sherwood, who is currently representing him in an ongoing criminal prosecution. [Docket No. 1 ("Compl.") at 4.] Macellari appears unsatisfied with Sherwood's representation, claiming he advised Sherwood that he does not want to be represented by counsel.

[Id.] Despite these instructions, Macellari claims Sherwood continues to represent him and "obstruct[] and destroy[] his] defen[s]e strategy." [Id.] Macellari also claims that Sherwood and Judge Donna Taylor colluded to violate his "right to defend [himself]." [Compl. at 6.] Even under the liberal reading that this Court gives to Macellari's Complaint, see *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), the Court is unable to determine if it has subject matter jurisdiction over this lawsuit—diversity of citizenship or federal question jurisdiction.

28 U.S.C. §§ 1331, 1332. Without more factual allegations, Macellari's alleged dissatisfaction with Sherwood's legal representation is insufficient to establish subject matter jurisdiction. Accordingly, this Court dismisses Macellari's Complaint without prejudice for lack of jurisdiction.

For the above reasons, and for other good cause shown, IT IS on this 11th day of February 2026, hereby: ORDERED that the Court GRANTS Plaintiff's IFP application; and it is further ORDERED that Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE [Docket No. 1]; and it is further ORDERED that Plaintiff may have the above-entitled case reopened, if, within thirty days of the date of the entry of this Memorandum Order, Plaintiff files an amended Complaint; and it is further ORDERED that Defendant shall not be served before the Court's sua sponte screen of an amended Complaint; and it is further ORDERED that the Clerk of the Court shall serve a copy of this Memorandum Order on Plaintiff to his address of record by regular U.S. mail; and it is finally ORDERED that the Clerk of the Court shall CLOSE this matter. s/Renée Marie Bumb RENÉE MARIE BUMB Chief United States District Judge