

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

LORANZY V. BENNETT,

Plaintiff,

vs.

CIVIL ACTION
No. 05-3446-SAC

LOUIS E. BRUCE, et al.,

Defendants.

ORDER

Plaintiff filed a pro se complaint under 42 U.S.C. § 1983, and sought leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. By orders dated December 15, 2005, and January 24, 2006, the court directed plaintiff to pay an initial partial filing fee pursuant to 28 U.S.C. § 1915(b)(1), and notified plaintiff that the failure to pay the fees as required herein could result in the dismissal of this action without prejudice.

By an order dated March 7, 2006, the court denied plaintiff's motion for leave to proceed in forma pauperis, based upon plaintiff's failure to pay the assessed initial partial filing fee, and dismissed the complaint without prejudice. Having reviewed the record, the court considers and decides the following post-judgment motions filed by plaintiff.

Plaintiff submitted a pleading (Doc. 8) docketed on March 7, 2006, titled as a motion to alter and amend pursuant to Fed.R.Civ.P. 59(e), and a motion to supplement the complaint to name additional defendants and claims. This pleading was prepared and signed by plaintiff prior to the court's dismissal of the complaint, and does

not address or allege error in the judgment entered on March 7, 2006. Instead, as indicated by plaintiff's later filing (Doc. 11) of a "Corrected Motion for Leave to Amend" his complaint, the court finds plaintiff's reference to Fed.R.Civ.P. 59(e) in the pleading docketed on March 7, 2006, was inadvertent error, and that plaintiff intended the pleading to be a request to file an amended complaint pursuant to Fed.R.Civ.P. 15(a). Accordingly, the court grants plaintiff's request (Doc. 11) to correct the title of his earlier pleading (Doc. 8), and dismisses the motion to alter and amend judgment, Fed.R.Civ.P. 59(e), pursuant to plaintiff's voluntary correction of this pleading.

Plaintiff's motions to supplement (Doc. 8) or amend (Doc. 11) the complaint are denied. In his proposed amended complaint, plaintiff seeks damages on allegations of constitutional error by defense counsel, prosecutors, and a state district court judge. The court finds no reason to allow this proposed post-judgment amendment of the complaint, and further finds plaintiff's claim for damages would be subject to summary dismissal as stating no claim for relief against any defense counsel, and as seeking damages from persons immune from such relief. See 28 U.S.C. § 1915(e)(2)(B)(ii)-(iii) ("Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines ...the action...fails to state a claim on which relief may be granted, or...seeks monetary relief against a defendant who is immune from such relief.").

Plaintiff also filed a motion (Doc. 10) under Fed.R.Civ.P. 60(b), seeking relief from the judgment entered in this matter. Plaintiff states he submitted three partial initial fee payments to

this court in January and February 2006, and argues dismissal of his complaint based on his noncompliance with 28 U.S.C. § 1915(b)(1) is not supported by the record. The court has reviewed the record and finds no receipt of the pre-judgment payments reported by plaintiff. Plaintiff's motion for relief from judgment is denied, as are plaintiff's motions (Docs. 9 and 12) for service of summons and the amended complaint, and plaintiff's motion (Doc. 13) for leave to file claims under this court's pendent jurisdiction.

The court's review of the record, however, discloses that four post-judgment partial payments were submitted to this court from plaintiff's inmate trust account on March 24, 2006 (\$44.80), May 15, 2006 (\$12.15), July 10, 2006 (\$13.44), and August 15, 2006 (\$13.80) for a total of \$84.19. Because the court denied plaintiff leave to proceed in forma pauperis in this action, no fee obligation resulted. The court directs the clerk's office to refund \$84.19 to plaintiff.

IT IS THEREFORE ORDERED that plaintiff's motion (Doc. 11) to correct Doc. 8 to reflect plaintiff's intent to seek leave to amend the complaint is granted, and that plaintiff's motion to alter and amend judgment (Doc. 8) is voluntarily withdrawn pursuant to plaintiff's correction of the pleading.

IT IS FURTHER ORDERED that plaintiff's post-judgment motion for leave to file an amended complaint (Docs. 8 and 11), for service of summons and the amended complaint (Docs. 9 and 12), and for leave to assert claims under this court's pendent jurisdiction (Doc. 13) are denied.

IT IS FURTHER ORDERED that plaintiff's motion for relief from judgment (Doc. 10) is denied.

IT IS FURTHER ORDERED that the clerk's office is to refund \$84.19 to plaintiff, the total of all payments received from plaintiff after the court denied plaintiff's motion for leave to proceed in forma pauperis.

IT IS SO ORDERED.

DATED: This 8th day of November 2006 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge