

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JEROME DAVIS,

Plaintiff,

v.

CASE NO. 06-3049-SAC

ENVIRONMENTAL PROTECTION AGENCY,

Defendant.

O R D E R

This matter is before the court on a form complaint for seeking relief under 42 U.S.C. § 1983, filed pro se by a prisoner incarcerated in a Nebraska state facility. Also before the court is plaintiff's motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915.

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner is required to pay the full filing fee in a civil action submitted to the federal courts. Where insufficient funds exist for the filing fee, the court is directed to collect an initial partial filing fee in the amount of 20 percent of the greater of the average monthly deposits to the inmate's account or the average monthly balance for the preceding six months. 28 U.S.C. § 1915(b)(1)(A) and (B). However, where an inmate has no means by which to pay the initial partial filing fee, the prisoner shall not be prohibited from bringing a civil action. 28 U.S.C. § 1915(b)(4).

Having considered the plaintiff's financial records, the court finds no initial partial filing fee may be imposed at this time due to plaintiff's limited resources, and grants plaintiff leave to

proceed in forma pauperis. Plaintiff remains obligated to pay the full \$250.00 district court filing fee in this civil action, through payments from his inmate trust fund account as authorized by 28 U.S.C. § 1915(b)(2).

Additionally, because plaintiff is a prisoner, the court is required to screen his complaint and to dismiss the complaint or any portion thereof that is frivolous, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. § 1915A(a) and (b).

In this action, plaintiff seeks a court order requiring the Environmental Protection Agency (EPA) to take action under 42 U.S.C. § 9659(b)(2) to determine the liability of specific companies for a superfund site in Nebraska. The instant complaint essentially mirrors and updates a prior action filed by petitioner in the District of Kansas seeking a writ of mandamus. See Davis v. Environmental Protection Agency, Case No. 05-3458-RDR. The district court denied that petition and dismissed the action without prejudice, noting plaintiff's option of pursuing relief under 42 U.S.C. § 9659 in a complaint filed in the United States District Court for the District of Columbia, after providing proper notice to the EPA Administrator. Plaintiff filed an appeal in that case, which is currently pending before the Tenth Circuit Court of Appeals.

The court finds the complaint should be dismissed because plaintiff's repetitive filing of essentially the same claim in this court is frivolous and abusive, and states no claim for relief under 42 U.S.C. § 1983. See 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) ("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 that...the action...is frivolous or malicious[,] or fails to state a claim on which relief may be granted.").

IT IS THEREFORE ORDERED that plaintiff is granted leave to proceed in forma pauperis.

IT IS FURTHER ORDERED that the complaint is dismissed without prejudice.

IT IS SO ORDERED.

DATED: This 22nd day of February 2006 at Topeka, Kansas.

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