

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SYLVESTER HENRY,

Plaintiff,

v.

CASE NO.08-3121-SAC

RICHARD FOGLE,

Defendant.

O R D E R

This matter is before the court on an "Emergency Civil Rights Complaint" filed under 42 U.S.C. § 1983 while plaintiff was incarcerated in a Kansas correctional facility. Plaintiff proceeds pro se, and seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915 without prepayment of the \$350.00 district court filing fee. Also before the court is plaintiff's "Emergency" motion to freeze the defendant's assets.

The court enters this preliminary order to decide these pending motions.

Motion for Leave to Proceed In Forma Pauperis

Pursuant to 28 U.S.C. § 1915(b)(1), plaintiff must pay the full \$350.00 filing fee in this civil action. If granted leave to proceed in forma pauperis, plaintiff is entitled to pay this filing fee over time, as provided by payment of an initial partial filing fee to be assessed by the court under 28 U.S.C. § 1915(b)(1) and by the periodic payments from plaintiff's inmate trust fund account as detailed in 28 U.S.C. § 1915(b)(2). Because any funds advanced to the court by plaintiff or on his behalf must first be applied to

plaintiff's outstanding fee obligations,¹ the court grants plaintiff leave to proceed in forma pauperis in the instant matter without payment of an initial partial filing fee. Once these prior fee obligations have been satisfied, however, payment of the full district court filing fee in this matter is to proceed under 28 U.S.C. § 1915(b)(2).

Motion for Emergency Relief

Plaintiff's complaint seeks in part an emergency order to prevent any censoring or reading of his outgoing mail. The court liberally construes this pro se pleading as presenting a request for preliminary injunctive relief, and denies the request.

Plaintiff filed this action while confined in the Winfield Correctional Facility (WCF). The sole defendant is WCF Correctional Officer Fogle. Plaintiff alleges this defendant is not following WCF regulations in the handling of plaintiff's mail, and seeks "emergency" relief to prevent defendant from censoring or reading any of plaintiff's outgoing legal mail. Having reviewed the record, the court finds plaintiff has demonstrated neither a substantial likelihood of success on his claims, nor any irreparable harm that will result if the emergency relief being sought is not granted. Because these showings are two of the essential requirements for obtaining provisional injunctive relief, plaintiff's request for an emergency order, and plaintiff's related request for an emergency freeze of defendant Fogle's assets, are denied.

¹See Henry v. Wichita Police Dept., Case No. 97-3495-GTV (\$150.00 district court filing fee) and (\$105.00 appellate filing fee); Henry v. Goddard, Case No. 08-3110-SAC (\$350.00 district court filing fee).

Screening of the Complaint

Because plaintiff initiated this action while he was a prisoner, the court is required to screen the complaint and to dismiss it 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). Plaintiff is advised that the court will do so by separate order after reviewing the records in the present case and in plaintiff's companion case, Henry v. Goddard, Case No. 08-3110-SAC.

IT IS THEREFORE ORDERED that plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is granted, with payment of the \$350.00 district court filing fee to proceed as authorized by 28 U.S.C. § 1915(b)(2) after satisfaction of plaintiff's prior filing fee obligations.

IT IS FURTHER ORDERED that plaintiff's emergency motion for provisional injunctive relief, and to freeze assets (Doc. 2), are denied.

IT IS SO ORDERED.

DATED: This 11th day of June 2008 at Topeka, Kansas.

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