

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

RONALD J. SERZYSKI, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 09-2594-CM  
 )  
 CERTAINTEED CORP., )  
 )  
 Defendant. )

**ORDER**

This matter is before the court on plaintiff’s application for leave to proceed *in forma pauperis* (**doc. 3**).

Section 1915 of Title 28 of the United States Code allows the court to authorize the commencement of a civil action “without prepayment of fees or security therefor, by a person who submits an affidavit that . . . the person is unable to pay such fees or give security therefor.” “Proceeding *in forma pauperis* in a civil case ‘is a privilege, not a right—fundamental or otherwise.’”<sup>1</sup> The decision to grant or deny *in forma pauperis* status under section 1915 lies within the sound discretion of the trial court.<sup>2</sup>

In his financial affidavit, plaintiff claims that his monthly expenses exceed his monthly income by more than \$1,500. Plaintiff has not indicated how he is sustaining such

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<sup>1</sup>*Barnett ex rel. Barnett v. Nw. Sch.*, No. 00-2499, 2000 WL 1909625, at \*1 (D. Kan. Dec. 26, 2000) (quoting *White v. Colo.*, 157 F.3d 1226, 1233 (10th Cir. 1998)).

<sup>2</sup>*Id.* (citing *Cabrera v. Horgas*, No. 98-4231, 1999 WL 241783, at \*1 (10th Cir. Apr. 23, 1999)).

a lifestyle. Plaintiff also indicates that he has an IRA account containing approximately \$160,000, but he has not indicated whether he is drawing on this account for monthly expenses, or if he otherwise has access to these funds.

The court therefore finds that the affidavit is incomplete and orders plaintiff to provide, by no later than **December 2, 2009**, a supplemental financial affidavit which includes the above-stated information, as well as any other matters which might be pertinent to the court in its determination of whether to allow plaintiff to proceed *in forma pauperis* in this case. Following receipt of this information, the court will consider plaintiff's application. If plaintiff fails to provide a supplemental financial affidavit by December 2, 2009, the court will deny plaintiff's application and require payment of the \$350 filing fee.

A copy of this order shall be mailed to plaintiff by certified and regular mail.

IT IS SO ORDERED.

Dated this 19th day of November, 2009, at Kansas City, Kansas.

s/ James P. O'Hara  
James P. O'Hara  
U.S. Magistrate Judge