

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MICHAEL O. DEVAUGHN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 23-CV-02555-EFM-GEB
)	
COUNTY OF MEADE, et; al.)	
)	
Defendant.)	
_____)	

REPORT AND RECOMMENDATION AND NOTICE

This matter is before the Court on Plaintiff Michael O. Devaughn’s Motion to Proceed Without Prepayment of Fees (ECF, No. 2, *sealed*) and supporting Affidavit of Financial Status (ECF, No. 3, *sealed*). For the reasons outlined below the Court **recommends** the Plaintiff’s motion (**ECF, No. 2, *sealed***) be **DENIED**.

I. NOTICE

Within fourteen (14) days after a party is served with a copy of this Report and Recommendation, any party may, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2), file written objections to this Report and Recommendation. A party must file any objections within the fourteen-day period if the party wants to have appellate review of the proposed findings of fact, conclusions of law, or recommended disposition.

II. REPORT AND RECOMMENDATION

Under 28 U.S.C. § 1915(a) the Court has the discretion to authorize filing of a civil case “without prepayment of fees or security thereof, by a person who submits an affidavit

that . . . the person is unable to pay such fees or give security thereof.”¹ “Proceeding *in forma pauperis* in a civil case ‘is a privilege, not a right—fundamental or otherwise.’”² To determine whether a party is eligible to proceed without prepayment of the fee, the Court reviews the party’s financial affidavit and compares his or her monthly expenses with the monthly income disclosed therein.³

Upon reviewing the Plaintiff’s financial affidavit, the Court determines the Plaintiff has sufficient monthly income exceeding reported expenses, such that reasonable payments can be made. To succeed on a Motion to Proceed Without Prepayment of Fees, Plaintiffs must demonstrate they are financially unable to pay the filing fee.⁴ The current filing fee for a civil complaint is \$405. Plaintiff’s sworn income is \$868.00 per month, and reported expenses (i.e. rent, groceries, gas, phone, car insurance) equal \$521.00.⁵ The Court recommends Plaintiff be allowed to pay the filing fee in nine monthly payments of \$45.00. These payments would not be an undue burden on Plaintiff.

However, a magistrate judge does not have authority under 28 U.S.C. § 636 to deny a motion to proceed without prepayment of fees.⁶

¹*Barnett ex rel. Barnett v. Nw. Sch.*, No. 00-2499-KHV, 2000 WL 1909625, *1 (D. Kan. Dec. 26, 2000) (citing *Cabrera v. Horgas*, No. 98-4231, 173 F.3d 863, *1 (10th Cir. April 23, 1999)).

²*Id.* (quoting *White v. Colorado*, 157 F.3d 1226, 1233 (10th Cir. 1998)).

³*Alexander v. Wichita Hous. Auth.*, No. 07-1149-JTM, 2007 WL 2316902, *1 (D. Kan. Aug. 9, 2007) (citing *Patillo v. N. Am. Van Lines, Inc.*, No. 02-2162-JWL, 2000 WL 1162684, *1) (D. Kan. April. 15, 2002) and *Webb v. Cessna Aircraft*, No. 00-2229-JWL, 2000 WL 1025575, *1 (D. Kan. July 17, 2000)).

⁴ See 28 U.S.C. § 1914(a) ("The clerk of each district court shall require the parties instituting any civil action, suit, or proceeding in such court . . . to pay a filing fee . . .").

⁵ ECF No. 3, *sealed* at 4-5.

⁶ *Lister v. Dept. of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (the denial of plaintiff’s motion to proceed in forma pauperis is a dispositive matter and the magistrate judge should issue a report and recommendation for de novo review by the district judge).

Accordingly, the undersigned Magistrate Judge **RECOMMENDS** that Plaintiff Michael O. Devaughn's Motion to Proceed Without Prepayment of Fees (**ECF No. 2, sealed**) is **DENIED**. Although service of process would normally be undertaken by the clerk of court pursuant to 28 U.S.C. § 1915(d) and Fed. R. Civ. P. 4(c)(3), the clerk is directed to stay service of process pending the District Court's review of the Report and Recommendation.⁷

IT IS SO ORDERED.

Dated this 9th day of February 2024 at Wichita, Kansas.

s/Gwynne E. Birzer
GWYNNE E. BIRZER
United States Magistrate Judge

⁷ See *Webb. v. Vratil*, No. 12-2588-EFM, ECF No. 7 (D. Kan. Sept. 28, 2012) (withholding service of process pending review under 28 U.S.C. § 1915(e) and jurisdictional review).