NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 19, 2023*
Decided November 22, 2023

Before

DIANE P. WOOD, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-2074

LOGAN DYJAK, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Central District of Illinois.
v.	No. 20-CV-03159
DANA WILKERSON, et al., *Defendants-Appellees*.	Joe Billy McDade, *Judge*.

O R D E R

This is our second time reviewing the dismissal of this case which Logan Dyjak, a civil detainee at McFarland Mental Health Center in Springfield, Illinois, brought against McFarland's employees for alleged constitutional violations. In our first

* This appeal is successive to cases no. 21-2102 and 21-2119 and is being decided under Operating Procedure 6(b) by the same panel. The appellees were not served with process and are not participating in this appeal. After examining the brief and record, we have concluded that oral argument is unnecessary. FED. R. APP. P. 34(a)(2)(C).

decision, *Dyjak v. Wilkerson*, 2022 WL 1285221 (7th Cir. Apr. 29, 2022), we vacated the denial of Dyjak's petition to proceed in forma pauperis ("IFP") and remanded. We ordered the district court to consider "Dyjak's liabilities along with Dyjak's assets" and to explain "whether it found wrongdoing" in Dyjak's petition. On remand, the court did both and dismissed the case as a sanction for the wrongdoing it detected. Because its findings are not clearly erroneous and the decision to dismiss was a proper exercise of discretion, we affirm.

In this suit under 42 U.S.C. § 1983, Dyjak primarily alleges that the defendants transferred Dyjak from co-ed housing to the sex-offense unit in order to punish speech protected by the First Amendment. (As we did in our previous decision, we continue to use the they/them pronouns that Dyjak uses.) When filing suit in June 2020, Dyjak moved to proceed IFP. Dyjak asserted that they had no income, no liabilities, and only $3.45 in cash. The district court invited Dyjak to amend the complaint to cure identified defects and renew the IFP application. In December, Dyjak did so, reporting $1.62 in cash and a check for $1,200 in COVID-related economic stimulus funds. Dyjak also reported, for the first time, a $5,000 debt to a friend named Madeline Bauer.

The court denied the IFP application. Before it did so, Dyjak filed another IFP motion in March 2021, offering new financial information: Dyjak had deposited the $1,200 stimulus check, transferred the money to Bauer after 11 days, received another stimulus check for $600, and transferred that sum to Bauer as well. Dyjak said that, when McFarland had not withdrawn these sums to pay for court fees, Dyjak "assumed" that funds were available to reimburse Bauer for essentials that Bauer had supplied. Dyjak added that, once courts in other cases denied IFP status to Dyjak, Dyjak asked Bauer to return the funds, but she did not return enough to cover the filing fee here. Based on this information, the court denied Dyjak's IFP status. It found that Dyjak briefly had $1,800 before sending it to Bauer instead of paying the court. When Dyjak did not pay the filing fee, the court dismissed the suit, prompting the first appeal.

In vacating the dismissal, we explained that we needed the district court to say more in its ruling. "Possession of $1800, for a civilly detained person for whom at least some necessities are provided by the institution, in some circumstances *may* be sufficient reason to deny an IFP motion. But the district court did not account for Dyjak's debts to the court system and to Bauer." *Dyjak*, 2022 WL 1285221, at *3 (7th Cir. Apr. 29, 2022) (citations omitted). On remand, we wanted the district court to tell us whether and how it took those debts into consideration. We said, "Perhaps the district court believed that the filing fee in this case took precedence over the fees owed in other

court cases or the personal debt," but we needed a statement to that effect. *Id.* Finally, if the district court intended to dismiss the case (rather than allow Dyjak to prepay the filing fee in full), we needed the court to "explain whether it found wrongdoing" that justified such a decision. *Id.*

On remand the district court clarified its ruling. First, it considered the debt and ruled that, in its "judgment, the filing fee was a higher and superior claim on Plaintiff's finances than any other indebtedness owed by Plaintiff, aside from other unpaid court filing fees associated with Plaintiff's other litigation." Next, it determined that Dyjak engaged in wrongdoing. It found that the "only" reason Dyjak appeared impoverished was that Dyjak squandered the available funds: If Dyjak had not "emptied" their funds to Bauer, "all or a substantial portion of the $1,800.00 would have been available to pay the filing fee in the instant case." Dyjak's "alacrity in depleting" the funds within days, according to the court, showed that Dyjak "intentionally misrepresented [their] financial condition and willingness to pay the filing fee." Because of this deception, Dyjak's excuse that they "assumed" McFarland would have withdrawn any filings fees rang "hollow." As a sanction for the misrepresentation, the court dismissed the case.

On appeal, Dyjak first contests the finding of deception in the IFP application and the denial of that application. We review that finding for clear error, *Robertson v. French*, 949 F.3d 347, 351 (7th Cir. 2020), and conclude that the finding and denial of the IFP application were proper. To begin, the district court has told us that it considered Dyjak's debt to Bauer and views Dyjak's filing-fee debts as superior to any personal debt to Bauer. Although prisoners need not "prioritize their filing fees above all other expenses." *Whitaker v. Dempsey*, 83 F.4th 1059, 1061 (7th Cir. 2023) (Wood, J., in chambers), a court may conclude that paying the fee for a lawsuit is a priority over a personal debt. See *Lucien v. DeTella*, 141 F.3d 773, 776 (7th Cir. 1998). That judgment was particularly reasonable here because Dyjak filed this suit *before* the debt to Bauer arose; recall that Dyjak did not assert any indebtedness to Bauer in Dyjak's original IFP application.

The district court also reasonably found that Dyjak not only refused to prioritize paying filing fees over their personal debt to Bauer, but that Dyjak deceived the court by omitting timely information. The record shows that, just days after Dyjak received the stimulus funds, Dyjak dispatched the money to Bauer without telling the court and seeking permission from it before removing the funds. Dyjak insists that they were confused about what to do with the funds. But disbursing the funds to a personal friend, thereby rendering them inaccessible to a court, "is not a permissible alternative

to seeking the judge's assistance" about the proper use of funds. *Kennedy v. Huibregtse*, 831 F.3d 441, 443 (7th Cir. 2016). Thus, the finding of deception was not clear error.

Next, we consider Dyjak's challenge to the district court's decision to dismiss the suit with prejudice as a sanction for the deception. We review that decision deferentially, for abuse of discretion. *Thomas v. Gen. Motors Acceptance Corp.*, 288 F.3d 305, 308 (7th Cir. 2002). And we conclude that the dismissal was reasonable. First, the deception in the application required that the court deny Dyjak's IFP petition and dismiss the case. 28 U.S.C. § 1915(e)(2)(A) (instructing courts to dismiss a case when it finds that "the allegation of poverty is untrue"). And dismissing the case *with prejudice* was a "permissible sanction" after the court found that Dyjak wrongfully removed their assets, without first seeking permission from the court, to avoid the filing fee. See *Reyes v. Fishel*, 996 F.3d 420, 425 (7th Cir. 2021). Therefore, it was not an abuse of discretion to end the case when Dyjak's allegation of poverty was untrue. *Id.*

Finally, Dyjak challenges a separate ruling that the district court made regarding the insufficiency of the allegations of their complaint. But because the district court properly dismissed this suit as a sanction for the wrongdoing in the IFP application, we need not review that other ruling.

AFFIRMED