

DEC 12 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IAN A. WOODS,

Plaintiff - Appellant,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; R. QUINTANA, P
6690,

Defendants - Appellees.

No. 13-17180

D.C. No. 2:13-cv-01314-APG-
CWH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Submitted December 5, 2014**

Before: HAWKINS, McKEOWN, and FRIEDLAND, Circuit Judges.

Nevada state prisoner Ian A. Woods appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to pay the initial partial filing fee. We have jurisdiction under 28 U.S.C. § 1291. We review for an

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

abuse of discretion. *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002). We vacate and remand.

The district court dismissed this action because Woods, who had been granted in forma pauperis status, did not timely pay the initial partial filing fee. However, it did so without determining whether Woods had sufficient funds to pay the partial filing fee at the time payment was ordered, and Woods has confirmed on appeal that he in fact lacked sufficient funds. *See* 28 U.S.C.

§ 1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.”); *Taylor*, 281 F.3d at 850 (district court cannot dismiss in forma pauperis prisoner’s case based on his failure to pay initial partial fee when his failure to pay is due to lack of available funds when payment is ordered). Because the district court did not have the benefit of this information at the time of dismissal, we vacate and remand for further proceedings.

VACATED and REMANDED.