

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
NORTHERN DIVISION

CURTIS SMITH,	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 18-00115-WS-N
	)	
NANCY A. BERRYHILL,	)	
Acting Commissioner of	)	
Social Security,	)	
Defendant.	)	

**ORDER**

This action is before the Court on Plaintiff Curtis Smith’s Complaint (Doc. 1) and his motion to proceed without prepayment of fees and costs (Doc. 2). The motion to proceed *in forma pauperis* (“IFP”) has been referred to the undersigned United States Magistrate Judge for pretrial disposition pursuant to 28 U.S.C. § 636(b)(3) and Local Rule 72.2(c)(3).

Authority for granting a plaintiff permission to proceed without prepayment of fees and costs is found at 28 U.S.C. § 1915, which provides as follows:

[Generally], any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.

28 U.S.C. § 1915(a)(1); *see Troville v. Venz*, 303 F.3d 1256, 1260 (11th Cir. 2002) (affirming the application of § 1915’s provisions to a non-prisoner’s complaint).

“The *in forma pauperis* statute, 28 U.S.C. § 1915, ensures that indigent persons will have equal access to the judicial system.” *Attwood v. Singletary*, 105 F.3d 610, 612-613 (11th Cir. 1997) (citing *Coppedge v. United States*, 369 U.S. 438, 446 (1962)). However, “[t]here is no question that proceeding *in forma pauperis* is a privilege, not a right,” *Camp v. Oliver*, 798 F.2d 434, 437 (11th Cir. 1986),<sup>1</sup> and “should not be a broad highway into the federal courts.” *Phillips v. Mashburn*, 746 F.2d 782, 785 (11th Cir. 1984) (per curiam). Nevertheless, “while a trial court has broad discretion in denying an application to proceed *in forma pauperis* under 28 U.S.C.A. § 1915, it must not act arbitrarily and it may not deny the application on erroneous grounds.” *Pace v. Evans*, 709 F.2d 1428, 1429 (11th Cir. 1983) (per curiam) (citing *Flowers v. Turbine Support Div.*, 507 F.2d 1242, 1244 (5th Cir. 1975)); see also *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306-07 (11th Cir. 2004) (per curiam) (“[A] trial court has wide discretion in denying an application to proceed IFP under 28 U.S.C. § 1915...However, in denying such applications a court must not act arbitrarily. Nor may it deny the application on erroneous grounds.” (quotation omitted)).

When considering a motion filed pursuant to § 1915(a), “[t]he only determination to be made by the court ... is whether the statements in the affidavit satisfy the requirement of poverty.” *Watson v. Ault*, 525 F.2d 886, 891 ([5]th Cir. 1976). An affidavit addressing the statutory language should be accepted by the court, absent a serious misrepresentation, and need not show that the litigant is “absolutely destitute” to qualify for indigent status

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<sup>1</sup> *Accord Rivera v. Allin*, 144 F.3d 719, 722, 724 (11th Cir. 1998) (“Leave to proceed IFP is, and always has been, the exception rather than the rule. To commence a civil lawsuit in federal district court, the general rule is that initiating parties must prepay a filing fee ... To be sure, proceeding IFP in a civil case is a privilege, not a right—fundamental or otherwise.”), *abrogated on other grounds*, *Jones v. Bock*, 549 U.S. 199 (2007).

under § 1915. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 338–40, 69 S. Ct. 85, 88–89, 93 L. Ed. 43 (1948). Such an affidavit will be held sufficient if it represents that the litigant, because of his poverty, is unable to pay for the court fees and costs, and to support and provide necessities for himself and his dependents. *Id.* at 339, 69 S. Ct. at 89. In other words, the statute is not to be construed such that potential litigants are forced to become public charges or abandon their claims because of the filing fee requirements. *Id.* at 339–40, 69 S. Ct. at 89...The district court must provide a sufficient explanation for its determination on IFP status to allow for meaningful appellate review. *O’Neal v. United States*, 411 F.2d 131, 138 (5th Cir. 1969); *Phipps v. King*, 866 F.2d 824, 825 (6th Cir. 1988); *Besecker v. State of Ill.*, 14 F.3d 309, 310 (7th Cir. 1994) (per curiam).

*Martinez*, 364 F.3d at 1307 (footnotes omitted).

“A court may not deny an IFP motion without first comparing the applicant's assets and liabilities in order to determine whether he has satisfied the poverty requirement.” *Thomas v. Chattahoochee Judicial Circuit*, 574 F. App'x 916, 917 (11th Cir. 2014) (per curiam) (unpublished)<sup>2</sup> (citing *Martinez*, 364 F.3d at 1307-08). “The question under 28 U.S.C. § 1915 is whether the litigant is ‘unable to pay’ the costs, and the answer has consistently depended in part on [the] litigant’s actual ability to get funds from a spouse, a parent, an adult sibling, or other next friend.” *Williams v. Spencer*, 455 F. Supp. 205, 209 (D. Md. 1978); see *Fridman v. City of New York*, 195 F. Supp. 2d 534, 537 (S.D.N.Y. 2002) (“In assessing an application to proceed *in forma pauperis*, a court may consider the resources that the applicant has or ‘can get’ from those who ordinarily provide the applicant with the ‘necessities of life,’ such as ‘from

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<sup>2</sup> In this Circuit, “[u]npublished opinions are not considered binding precedent, but they may be cited as persuasive authority.” 11th Cir. R. 36-2 (effective Dec. 1, 2014). See also *Bonilla v. Baker Concrete Const., Inc.*, 487 F.3d 1340, 1345 n.7 (11th Cir. 2007) (“Unpublished opinions are not controlling authority and are persuasive only insofar as their legal analysis warrants.”).

a spouse, parent, adult sibling or other next friend.’ . . . If it appears that an applicant’s ‘access to [ ] court has not been blocked by his financial condition; rather [that] he is “merely in the position of having to weigh the financial constraints imposed if he pursues [his position] against the merits of his case,” then a court properly exercises its discretion to deny the application.”); *Sellers v. United States*, 881 F.2d 1061, 1063 (11th Cir. 1989) (per curiam) (funds “derived from family sources” are relevant to IFP determination); *Wilson v. Sargent*, 313 F.3d 1315, 1319-20 (11th Cir. 2002) (per curiam) (same).<sup>3</sup> “Federal Courts have frequently recognized that, for purposes of determining IFP eligibility, it is appropriate to consider any support that an IFP applicant might receive from a spouse, or from **any other individual.**” *Ginters v. Frazier*, Civ. No. 07-4681 (JMR/RLE), 2008 WL 314701, at \*2 n.1 (D. Minn. Feb. 4, 2008) (emphasis added); *accord Fridman*, 195 F. Supp. 2d at

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<sup>3</sup> Most cases considering the ability of someone else to pay these costs for a putative pauper focus on whether those costs can be borne by a close family member—such as a spouse, parent, an adult sibling, or other next friend. *E.g.*, *Williams*, 455 F. Supp. at 209; *see also Pisano v. Astrue*, Civil Action No. 11-30269-KPN, 2012 WL 79188, at \*2 (D. Mass. Jan. 10, 2012) (“A number of courts have come to the same conclusion that the income and resources of a spouse, if not other close family members as well, are relevant to the determination of indigency under 28 U.S.C. § 1915.”) (collecting cases); *but see Fridman*, 195 F. Supp. 2d at 537 (“In assessing an application to proceed *in forma pauperis*, a court may consider the resources that the applicant has or ‘can get’ from **those who ordinarily provide the applicant with the ‘necessities of life,’** such as ‘from a spouse, parent, adult sibling or other next friend.’” (emphasis added)), *Ginters v. Frazier*, Civ. No. 07-4681 (JMR/RLE), 2008 WL 314701, at \*2 n.1 (D. Minn. Feb. 4, 2008) (“Federal Courts have frequently recognized that, for purposes of determining IFP eligibility, it is appropriate to consider any support that an IFP applicant might receive from a spouse, or from **any other individual.**” (emphasis added)), and *Akharaju v. Ashcroft*, No. 03 C 6447, 2003 WL 22232969, at \*1 (N.D. Ill. Sept. 26, 2003) (“In evaluating the funds available to *in forma pauperis* movants, courts may consider the income or resources of **interested persons**, such as spouses and parents.” (citation omitted and emphasis added)).

The undersigned requires this inquiry when it appears likely that a plaintiff’s primary means of support is through such an individual.

537; *Williams*, 455 F. Supp. at 208-09; *Akkaraju v. Ashcroft*, No. 03 C 6447, 2003 WL 22232969, at \*1 (N.D. Ill. Sept. 26, 2003) (“In evaluating the funds available to *in forma pauperis* movants, courts may consider the income or resources of interested persons, such as spouses and parents.” (citation omitted)).

Upon consideration, the undersigned finds that the information in the Plaintiff’s present motion (Doc. 2) is insufficient to make an informed IFP determination. More specifically, the undersigned finds that the following additional information is needed concerning the Plaintiff’s complete financial picture:

1. Plaintiff indicates that he co-owns an item of real property with Stephanie Braxton. (Doc. 2 at 2). Plaintiff identifies the property as “city lot and house” but failed to provide the property address. Plaintiff shall provide the full address of this item of real property.
2. Plaintiff indicates that he pays \$260 in rent on a monthly basis, but also states, “I live with my fiancé and she pays the bills.” (Doc. 2 at 3, ¶ 3a and Doc. 2 at 4, ¶ 5). Plaintiff shall clarify which bills he pays and which bills his fiancé pays and shall provide an estimated monthly amount of support he is receiving from his fiancé.

Accordingly, on or before **Tuesday, March 27, 2018**, Plaintiff must either 1) pay the full \$400 filing fee, or 2) file an amended IFP motion or sworn supplement to the present IFP motion that provides the information requested above, along with any additional information the Plaintiff feels is necessary to demonstrate entitlement to proceed without prepayment of the filing fee. The failure to comply with this directive will result in entry of a recommendation to the Court that the Plaintiff be denied leave to proceed IFP in this action, and that this action be dismissed without prejudice for failure to prosecute and obey the Court’s orders unless the Plaintiff pays

the filing fee within the time period for objections to the recommendation. *See Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1337 (11th Cir. 2005) (holding that a district court may dismiss an action for failure to prosecute and obey a court order under both Federal Rule of Civil Procedure 41(b) and the court’s inherent power to manage its docket); *Woods v. Dahlberg*, 894 F.2d 187, 187 (6th Cir. 1990) (per curiam) (denial of IFP motion is “the functional equivalent of an involuntary dismissal”).

**DONE and ORDERED** this the 14<sup>th</sup> day of **March 2018**.

/s/ Katherine P. Nelson  
**KATHERINE P. NELSON**  
**UNITED STATES MAGISTRATE JUDGE**