

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ROBERT ROSS BANKS,

Plaintiff,

vs.

ALOK KALE and PRESTON HUMPHREY,

Defendants.

Case No. 13-cv-559-JPG-PMF

**MEMORANDUM AND ORDER**

This matter comes before the Court on plaintiff Robert Ross Banks' motion to proceed *in forma pauperis* (Doc. 3).

A federal court may permit an indigent party to proceed without pre-payment of fees. 28 U.S.C. § 1915(a)(1). Nevertheless, a court can deny a qualified plaintiff leave to file *in forma pauperis* or can dismiss a case if the action is clearly frivolous or malicious or fails to state a claim. 28 U.S.C. § 1915(e)(2)(B)(i) & (ii). The test for determining if an action is frivolous or without merit is whether the plaintiff can make a rational argument on the law or facts in support of the claim. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Corgain v. Miller*, 708 F.2d 1241, 1247 (7th Cir. 1983). An action fails to state a claim if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When assessing a petition to proceed *in forma pauperis*, a district court should inquire into the merits of the petitioner's claims, and if the court finds them to be frivolous, it should deny leave to proceed *in forma pauperis*. *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982).

Based on the documentation provided by Banks, the Court is satisfied that he is indigent. However, it cannot determine that his cause of action is not frivolous or malicious. Banks

alleges his attorney in his criminal case accepted a third-party payment without informing Banks. Banks, however, fails to describe the facts relating to this alleged payment. Without more facts, the Court cannot decide whether to allow Banks to proceed without pre-payment of fees. The Court **ORDERS** that Banks shall have up to and including July 8, 2013, to file a supplement to his complaint explaining the facts that gave rise to the violations alleged in the complaint. The court **RESERVES RULING** on Banks' pending motion (Doc. 3) until after July 8, 2013. If Banks is unable to tell the Court the facts on which his claims are based, the Court may dismiss this action for failure to state a claim.

**IT IS SO ORDERED.**

**DATED:** June 17, 2013

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**