

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

**LISA NIEPERT,**

**Plaintiff,**

**vs.**

**JEFF BROWN,**

**Defendants.**

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**Case No. 17-cv-288-JPG**

**MEMORANDUM AND ORDER**

**GILBERT, District Judge:**

This matter is before the Court for case management. This case was originally filed by Plaintiff together with 7 other inmates at the Bond County Jail, as *Jeremy K. Smith, et al., v. Jeff Brown*, Case No. 17-cv-006-JPG. On March 20, 2017, Plaintiff's claims were severed into this action, and the original Complaint (Doc. 2) was dismissed pursuant to 28 U.S.C. § 1915A for failure to state a claim upon which relief may be granted. (Doc. 1).

Plaintiff was ordered to submit an amended complaint if she wished to proceed with this case. (Doc. 1). Later, the Court ordered an extension of Plaintiff's deadline to file the amended pleading, to account for the possibility that Plaintiff did not receive the first order directing her to amend the Complaint. (Doc. 6). The amended complaint was due on May 17, 2017. Plaintiff was warned that if she failed to submit an amended complaint, this case would be dismissed with prejudice, and the dismissal would count as a "strike" under 28 U.S.C. § 1915(g). (Doc. 6).

Plaintiff's May 17, 2017, deadline has come and gone, and Plaintiff has failed to respond in any way. This action is therefore subject to dismissal for failure to prosecute.

**IT IS HEREBY ORDERED** that this action is **DISMISSED with prejudice** for failure

to prosecute. FED. R. CIV. P. 41(b); *see generally James v. McDonald's Corp.*, 417 F.3d 672, 681 (7th Cir. 2005); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Lucien v. Breweur*, 9 F.3d 26, 29 (7th Cir. 1993) (dismissal for failure to prosecute is presumptively with prejudice).

Because the original Complaint was dismissed for failure to state a claim upon which relief may be granted, and no amended pleading was filed, this dismissal shall count as one of Plaintiff's three allotted "strikes" under the provisions of 28 U.S.C. § 1915(g).

Plaintiff's motion for leave to proceed *in forma pauperis* ("IFP") (Doc. 4) is **DENIED**. Plaintiff failed to fill in any of the information requested in the form motion. She also failed to sign the motion as required by Federal Rule of Civil Procedure 11. Further, she failed to respond to the Court's order (Doc. 7) to provide the previous 6 months' prisoner trust fund account information.

Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$400.00 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

To that end, the agency having custody of the Plaintiff is **DIRECTED** to remit the \$400.00 filing fee from her prison trust fund account if such funds are available. If she does not have \$400.00 in her account, the agency must send an initial payment of 20% of the current balance or the average balance during the past six months, whichever amount is higher. Thereafter, Plaintiff shall make monthly payments of 20% of the preceding month's income credited to Plaintiff's prison trust fund account until the \$400.00 filing fee is paid in full. The agency having custody of Plaintiff shall forward these payments from the Plaintiff's trust fund account to the Clerk of this Court each time the Plaintiff's account exceeds \$10.00, until the \$400.00 fee is paid. Payments shall be mailed to: Clerk of the Court, United States District

Court for the Southern District of Illinois, P.O. Box 249, East St. Louis, Illinois 62202. The Clerk is **DIRECTED** to mail a copy of this order to the Trust Fund Officer at the Bond County Jail upon entry of this Order.

The Clerk is **DIRECTED** to **CLOSE THIS CASE** and enter judgment accordingly.

If Plaintiff wishes to appeal this dismissal, her notice of appeal must be filed with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). A motion for leave to appeal *in forma pauperis* should set forth the issues Plaintiff plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). If Plaintiff does choose to appeal, she will be liable for the \$505.00 appellate filing fee irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur another “strike.” A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline cannot be extended.

**IT IS SO ORDERED.**

**DATED: May 31, 2017**

*s/J. Phil Gilbert*  
United States District Judge