

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

CARLTON MILLER, 42116-044,)
Plaintiff,)
vs.) Civil No. 21-cv-01043-JPG
USA,)
Defendant.)

ORDER DISMISSING CASE

GILBERT, District Judge:

This case was opened when Plaintiff Carlton Miller filed a Complaint against the United States pursuant to the Federal Tort Claims Act. (Doc. 1). Along with the Complaint, he filed a Motion for Leave to Proceed *in forma pauperis* (“IFP motion”). (Doc. 2). On August 24, 2021, Plaintiff’s IFP motion was denied when the Court determined that Plaintiff was not indigent. (Doc. 6). Plaintiff was ordered to pay the full \$402.00 filing and docketing fee no later than September 23, 2021. (*Id.*). He was warned that failure to do so would result in the dismissal of this action for failure to comply with a court order. (*Id.*) (citing FED. R. CIV. P. 41(b)).

Plaintiff has not yet paid the filing fee for this action. The deadline for doing so expired on September 23, 2021. A week has since passed. Plaintiff has not paid any portion of the fee or requested more time to make payment.

Accordingly, this case is **DISMISSED** without prejudice for Plaintiff’s failure to comply with the Court’s Order at Doc. 6. *See* FED. R. CIV. P. 41(b); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). 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

\$402.00 remains due and payable. 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

The agency having custody of Plaintiff is directed to remit the \$402.00 filing fee from his prison trust fund account if such funds are available. If he does not have \$402.00 in his 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, the agency shall begin forwarding monthly payments of 20% of the preceding month's income credited to Plaintiff's trust fund account (including all deposits to the inmate account from any source) until the statutory fee of \$402.00 is paid in its entirety. The agency having custody of Plaintiff shall forward payments from Plaintiff's account to the Clerk of Court each time the Plaintiff's account exceeds \$10.00 until the \$402.00 filing fee is paid. Payments shall be mailed to: Clerk of the Court, United States District Court for the Southern District of Illinois. The Clerk is **DIRECTED** to send a copy of this Order to the Trust Fund Officer at the United States Penitentiary in Marion, Illinois ***upon entry of this Order.***

The Clerk's Office is **DIRECTED** to close this case and enter judgment accordingly.

IT IS SO ORDERED.

DATED: 10/1/2021

s/J. Phil Gilbert
J. PHIL GILBERT
United States District Judge