

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

DAVID R. NEAL,

Plaintiff,

v.

MARK SEVIER, et al.,

Defendants.

CAUSE NO.: 3:18-CV-452-PPS-MGG

OPINION AND ORDER

David R. Neal, a prisoner without a lawyer, filed a motion for leave to proceed in forma pauperis and a complaint. However, his litigation history suggests that he is barred from proceeding in forma pauperis under 28 U.S.C. § 1915(g). This statutory provision is commonly known as the “Three Strikes Rule,” and Neal has accumulated three strikes:

1. *Neal v. Sherr*, 3:02-cv-65 (N.D. Ind. filed Jan. 23, 2002), dismissed on February 20, 2002, pursuant to 28 U.S.C. § 1915A;
2. *Neal v. Crawford*, 3:07-cv-289 (N.D. Ind. filed June 22, 2007), dismissed on September 17, 2007, pursuant to 28 U.S.C. § 1915A;
3. *Neal v. Mitchiff*, 3:17-cv-43 (N.D. Ind. filed Jan. 10, 2017), dismissed on May 25, 2017, pursuant to 28 U.S.C. § 1915A.

An inmate with three or more strikes “can use the partial prepayment option in § 1915(b) only if in the future he ‘is under imminent danger of serious physical injury.’” *Abdul-Wadood v. Nathan*, 91 F.3d 1023, 1025 (7th Cir. 1996). In order to meet the imminent danger standard, the threat complained of must be real and proximate.

Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th Cir. 2003). Only “genuine emergencies” qualify as a basis for circumventing § 1915(g). *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir. 2002). In this case, Neal asserts claims regarding bodily fluid retention and a slip-and-fall that occurred at the Westville Correctional Facility on December 17, 2017, expressly alleging that he had not received medical care or disability accommodations as of January 4, 2018. Considering that this case was filed on April 23, 2018 and that Neal has transferred to another correctional facility, the complaint does not indicate that Neal faces imminent danger of serious physical injury. Therefore, he may not proceed in forma pauperis and must pay the \$400 filing fee to continue with this case.

For these reasons, the court:

- (1) DENIES the motion for leave to proceed in forma pauperis;
- (2) ORDERS David R. Neal to pay the filing fee by July 19, 2018; and
- (3) CAUTIONS David R. Neal that, if the fee is not paid by that date, this case will be dismissed without further notice.

SO ORDERED on June 20, 2018.

s/ Philip P. Simon

JUDGE
UNITED STATES DISTRICT COURT