

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**TYROLIA DEJUAN WILSON,**

**Plaintiff,**

**v.**

**Case No. 18-2027**

**SAINT FRANCIS COMMUNITY SERVICES,**

**Defendant.**

**MEMORANDUM AND ORDER**

On January 30, 2018, United States Magistrate Judge Teresa J. James issued a Report and Recommendation (Doc. 5). The report recommends that this court deny plaintiff Tyrolia DeJuan Wilson's Motion for Leave to Proceed Without Prepayment of Fees (Doc. 3) because the court found that plaintiff has sufficient resources to pay the filing fee. Plaintiff had fourteen days, until February 13, 2018, to file written objections to the Report and Recommendation. Plaintiff did not file any objections.

The undersigned's review of a report and recommendation on a dispositive issue requires de novo review of any part of the magistrate judge's recommendation that is objected to. Fed. R. Civ. P. 72(b)(3). Because plaintiff did not object, the court need not undertake a de novo review of her motion to proceed *in forma pauperis*. In any event, the court agrees with Judge James's review of plaintiff's affidavit and motion and the reasoning set forth in the report and recommendation and therefore adopts it in full.

**REPORT AND RECOMMENDATION**

**NOTICE**

Within fourteen (14) days after a party is served with a copy of this Report and Recommendation, that party may, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2), file written objections to this Report and Recommendation. A party must file any objections within the fourteen-day period if that party wants to have appellate review of the proposed findings of fact, conclusions of law, or recommended

disposition. If no objections are timely filed, no appellate review will be allowed by any court.

### **REPORT AND PROPOSED FINDINGS**

Plaintiff commenced this action *pro se* on January 18, 2018 by filing a Complaint (ECF No. 1) alleging employment discrimination on the basis of disability, HIPAA violation, retaliation and harassment against Saint Francis Community Services. Compl. at 1-2, ECF No. 1. This action stems from allegedly discriminatory and retaliatory conduct during Plaintiff's employment as a substance abuse counselor, a position he still holds with Saint Francis Community Services. *Id.* at 3-4. This matter comes before the Court on Plaintiff's Motion to Proceed without Prepayment of Fees (ECF No. 3).

Section 1915 of Title 28 of the United States Code allows the court to authorize the commencement of a civil action "without the prepayment of fees or security therefor, by a person who submits an affidavit...[if] the person is unable to pay such fees or give security therefor." To succeed on a motion to proceed *in forma pauperis*, the movant must show a financial inability to pay the required filing fees. The decision to grant or deny *in forma pauperis* status under section 1915 lies within the "wide discretion" of the trial court.

Based on the information contained in his Affidavit of Financial Status (ECF No. 3), Plaintiff has not shown a financial inability to pay the required filing fee. Plaintiff is currently employed and claims \$1,800.00 in monthly income. Aff. Fin. Stat. at 2, ECF No. 3-1. He owns four vehicles and owes nothing on them. He has \$700.00 cash on hand. Plaintiff claims total monthly expenses of \$1,720.00. *Id.* at 4-5. Because Plaintiff's monthly income exceeds his monthly expenses, the Court finds that Plaintiff has sufficient financial resources to pay the filing fee.

The Tenth Circuit in *Lister v. Department of the Treasury*, No. 04-5087, 2005 WL 1231928, at \*2 (10th Cir. May 25, 2005). has held that magistrate judges have no authority to enter an order denying a motion to proceed without prepayment of fees because such ruling is considered dispositive. Under Fed. R. Civ. P. 72(b), a magistrate judge can only issue a report and recommendation for a decision by the district court. The undersigned Magistrate Judge therefore submits to the District Judge the following Recommendation regarding Plaintiff's motion.

### **RECOMMENDATION**

Based upon the above findings, it is hereby recommended that Plaintiff's Motion to Proceed Without Prepayment of Fees (ECF No. 3) be denied. Plaintiff should be ordered to prepay the full filing fee of \$400 within 30 days in order for this action to proceed and cautioned that failure to pay the filing fee by that time will result in the dismissal of this action without prejudice.

**IT IS THEREFORE ORDERED** that Judge James's Report and Recommendation is adopted in full and plaintiff's Motion for Leave to Proceed Without Prepayment of Fees (Doc. 3) is denied.

**IT IS FURTHER ORDERED** that plaintiff prepay the full filing fee of \$400 within 30 days for this action to proceed. Failure to pay the filing fee within 30 days, by March 16, will result in dismissal of this action without prejudice.

Dated February 14, 2018, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**