

Proceeding in forma pauperis in a civil case is a privilege which is within the court's discretion to grant or deny. White v. Colorado, 157 F.3d 1226, 1233 (10th Cir. 1998) ("a privilege not a right-fundamental or otherwise"); Cabrera v. Horgas, No. 98-4231, 1999 WL 241783, at *1 (10th Cir. Apr. 23, 1999) (within sound discretion of trial court), cert. denied, 531 U.S. 832 (2000). Denial, however, must not be arbitrary or based on erroneous grounds. Buggs v. Riverside Hosp., No. 97-1088-WEB, 1997 WL 321289, at *8 (D. Kan. Apr. 9, 1997). The filing fee in civil cases is presently \$350.00. 28 U.S.C. § 1914(a).

The court has reviewed plaintiff's affidavit and finds plaintiff has failed to demonstrate that she is unable to pay the filing fee in this case. Plaintiff's affidavit demonstrates that her monthly income exceeds her monthly obligations by \$320.00. This court has held that where discretionary income is sufficient to pay the filing fee even in a case where total expenses exceed total income, denial of an in forma pauperis motion is appropriate. Scherer v. Merck & Co., Civ. A. No. 05-2019-CM, 2006 WL 2524149 at *1 (D. Kan. Aug. 24, 2006) (total expenses exceeded income by \$90.00 per month) (citing Brewer v. Overland Park Police Dep't, 24 Fed. Appx. 977, 979 (10th Cir. 2002) (monthly income exceeded monthly expenses by "a few hundred dollars"))).

IT IS THEREFORE RECOMMENDED that plaintiff's motion (Doc. 4) be denied and plaintiff be ordered to pay the filing fee in this case.

Copies of this recommendation and report shall be delivered to counsel of record for the plaintiff. Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b), and D. Kan. Rule 72.1.4, plaintiff may serve and file written objections to this recommendation within ten days after being served with a copy. Failure to timely file objections with the court will be deemed a waiver of appellate review. Morales-Fernandez v. INS, 418 F.3d 1116, 1119 (10th Cir. 2005).

Dated at Wichita, Kansas on August 26, 2009

s:\ Gerald B. Cohn
GERALD B. COHN
United States Magistrate Judge