

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GARY ABRAHAM,)	
)	8:05cv533
Plaintiff,)	
)	ORDER on INITIAL REVIEW
v.)	and MOTION FOR IFP
)	
PROGRESSIVE INSURANCE,)	
)	
Defendant.)	

The plaintiff, a nonprisoner, has filed a civil complaint, together with an application to proceed in forma pauperis (“IFP”). Upon review of the record, the motion to proceed IFP is granted. Because the plaintiff is proceeding IFP, the U.S. Marshal will serve the defendant.

Admonitions

The plaintiff is informed that the court can later enter an order taxing costs in this case. No one, including the plaintiff, is relieved by this order from the obligation to pay or to reimburse taxable costs after this action is over.

In addition, even after a motion to proceed IFP has been granted, the court may still revoke IFP status and dismiss a complaint under 28 U.S.C. § 1915(e)(2)(B) if the court finds that the complaint is frivolous or malicious. Kane v. Lancaster Co. Dep’t of Corrections, 960 F. Supp. 219, 222 (D. Neb. 1997). To determine that a claim is frivolous, the court must find that the claim is based on an indisputably meritless legal theory or that factual contentions are clearly baseless. Id.

Initial Review

The complaint is now subject to initial review pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). When presented with an IFP complaint filed by a nonprisoner, the court is “limited, in terms of sua sponte initial review, to deciding whether the plaintiff’s complaint is frivolous or malicious.” Id. Construed liberally, I do not find that the complaint is frivolous or malicious. See Bracken v. Dormire, 247 F.3d 699, 702-03 (8th Cir. 2001) (“it is our longstanding practice to construe pro se pleadings liberally”).

THEREFORE, IT IS ORDERED:

1. Filing no. 2, the plaintiff's Motion for Leave to Proceed in Forma Pauperis is granted, and the complaint shall be filed without payment of fees.

2. The Clerk of Court shall send the plaintiff a summons and Form-285 together with a copy of this order. The plaintiff shall, as soon as possible, return the completed summons and 285 form to Clerk of Court. In the absence of the completed forms, service of process cannot occur.

3. Upon receipt of the completed summons and 285 forms, the Clerk shall sign the summons and forward it, together with a copy of the complaint, to the U.S. Marshal for service on the defendant. The Marshal shall serve the summons and complaint without payment of costs or fees. Service may be by certified mail in accordance with to Fed. R. Civ. P. 4 and Nebraska law, in the discretion of the Marshal.

4. Failure to obtain service on a defendant within 120 days from the filing of the complaint, as provided by Fed. R. Civ. P. 4(m), may result in dismissal of this matter without further notice. The Clerk shall bring this matter to the attention of the court if no defendant has been served by expiration of the 120-day deadline.

5. After an appearance has been filed by a defendant, the plaintiff shall serve on the defendant or, if an appearance has been entered by counsel, upon such counsel, a copy of every future document submitted to the court. Parties usually serve copies of documents on other parties by first class mail. The plaintiff shall include with each document submitted to the court a "Certificate of Service" stating the date a true and correct copy of such document was mailed to each defendant or the attorney of a represented defendant. To send communications to the court without serving a copy on the other parties to the case violates the rules of court.

6. A defendant has twenty (20) days after receipt of a summons to answer or otherwise respond to a complaint.

7. The plaintiff shall keep the court informed of his current address at all times while the case is pending. Failure to do so may result in dismissal.

8. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of court in the prosecution of this case. The federal rules are available at any law library, and the local rules are available from the Clerk of Court a minimal cost, and also on the court's web site at www.ned.uscourts.gov.

DATED this 9th day of December, 2005.

BY THE COURT:

s/ F. A. GOSSETT
United States Magistrate Judge