

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

HAROLD REYNOLDS,	)	
COMMUNITY TELECAST, INC.,	)	
	)	
Plaintiffs,	)	8:13CV86
	)	
v.	)	
	)	
COX CABLE, COX COMMUNICATIONS,	)	ORDER
JOHN DOES 1-10,	)	
	)	
Defendants.	)	
	)	

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This matter is before the Court on the motion of plaintiffs to proceed in forma pauperis under 28 U.S.C. § 1915 (Filing No. [2](#)). Under the statute the Court may authorize commencement of a suit "without prepayment of fees . . . by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). The Court must resolve two basic questions before considering the merits of plaintiffs' motion: (1) whether the statute's reference to "such prisoner" excludes non-prisoners from its coverage; and (2) whether plaintiff Community Telecast, Inc. is entitled to proceed in forma pauperis as a "person" under the statute.

#### I. Non-Prisoners

Three federal circuit courts and the Court of Federal Claims have found that the legislative history and a reading of the statute as a whole indicate that prisoners and non-prisoners

alike are entitled to petition a federal court to proceed in forma pauperis under § 1915. *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306 n. 1 (11th Cir. 2004); *Haynes v. Scott*, 116 F.3d 137, 139 (5th Cir. 1997); *Floyd v. U.S. Postal Serv.*, 105 F.3d 274, 275 (6th Cir. 1997); *Hayes v. United States*, 71 Fed.Cl. 366 (2006). This Court finds the reasoning of those courts persuasive and therefore finds that plaintiffs' status as non-prisoners does not bar them from petitioning the Court.

## II. "Person"

The Supreme Court has held unequivocally that the term "person" in § 1915 refers only to natural persons. *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 208-09 (1993). Thus, while plaintiff Reynolds may be permitted to proceed in forma pauperis as a "person" under the statute, Community Telecast, Inc. cannot. While Reynolds has the option of pursuing any claims that accrue to him personally in a suit independent of the corporation, if the parties choose to continue the litigation together, Community Telecast must pay the appropriate fees.

## III. Merits of Reynolds's Motion

In reviewing Reynold's affidavit, the Court noted that the plaintiff listed assets as "none" but also listed a monthly mortgage payment which suggests that plaintiff is in possession of an asset which has been used as security against a loan.

Reynolds must resolve this apparent contradiction so that the Court can make a determination based on a full and accurate picture of his financial circumstances.

IT IS ORDERED:

- 1) Plaintiff Community Telecast, Inc.'s motion to proceed in forma pauperis is denied with prejudice.
- 2) Plaintiff Harold Reynolds's motion to proceed in forma pauperis is denied without prejudice.

DATED this 28th day of March, 2013.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court