

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

STANLEY LINZY,)
)
Plaintiff,)
)
vs.) No. CIV-16-1031-W
)
JASON BRYANT, Warden, et al.,)
)
Defendants.)

ORDER

On October 28, 2016, United States Magistrate Judge Suzanne Mitchell issued a Report and Recommendation in this matter and recommended that the action be dismissed without prejudice to refiling. See Doc. 8. Plaintiff Stanley Linzy, a state prisoner proceeding pro se, was advised of his right to object, see id. at 3, and the matter came before the Court on Linzy's Objection to Report and Recommendation. See Doc. 9.

In reviewing the record de novo, the Court concurred with Magistrate Judge Mitchell's finding that Linzy had failed to pay the initial partial filing fee of \$17.63 as ordered. See Doc. 6.¹ The Court further agreed that at the time the Report and Recommendation was issued, the record did not show any reason why payment had not been made.

In his Objection to Report and Recommendation, Linzy requested an extension of time to pay, and in the notarized statement submitted with his Objection to Report and

¹On September 8, 2016, Magistrate Judge Mitchell found that Linzy was entitled to proceed without prepayment of the full filing fee and granted his Motion for Leave to Proceed in Forma Pauperis. See Doc. 6. She directed Linzy to pay the initial partial fee of \$17.63 by September 28, 2016, and warned him of the consequences of his failure to do so. See id. Linzy failed to comply, and on October 7, 2016, Magistrate Judge Mitchell again directed Linzy to pay the initial partial filing fee. See Doc. 7.

Recommendation, Linzy recounted what steps he had taken in October 2016 to insure payment. See Doc. 9 at 2. Linzy, however, did not explain why the filing fee had not been paid by September 28, 2016, as Magistrate Judge Mitchell had first ordered on September 8, 2016. See Doc. 6.

Despite Linzy's failure to do so, the Court nevertheless found that additional time was warranted and on November 10, 2016, it granted Linzy's request for an extension of time. See Doc. 10. Linzy was ordered to pay the sum of \$17.63 on or before November 28, 2016, and he was advised of the consequences of his failure to do so. See id. at 2. The record now shows that Linzy has paid the initial partial filing fee as ordered by the Court. See Doc. 11.

The Court therefore

(1) ADOPTS the Report and Recommendation [Doc. 10] filed on October 28, 2016, to the extent stated: the Court concurs with Magistrate Judge Mitchell's finding that Linzy failed to pay the initial partial filing fee of \$17.63 as first ordered, see Doc. 6, and at the time the Report and Recommendation issued, the record did not show any reason why payment had not been made;

(2) because Linzy has now paid the required amount, FINDS that dismissal of this matter is not now warranted under Rule 41(b), F.R.Civ.P.; and

(3) RE-REFERS this action to Magistrate Judge Mitchell for further proceedings.

ENTERED this 18th day of November, 2016.


LEE R. WEST
UNITED STATES DISTRICT JUDGE