

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

JOSHUA EDWARD PENTECOST,)	
)	
Plaintiff,)	
)	
VS.)	No. 1:15-cv-1119-JDT-egb
)	
STATE OF TENNESSEE,)	
)	
Defendant.)	

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS*
DISMISSING CASE WITHOUT PREJUDICE
AND ASSESSING \$400 CIVIL FILING FEE

On May 13, 2015, Plaintiff Joshua Edward Pentecost, Tennessee Department of Correction prisoner number 473429, who is incarcerated at the Northwest Correctional Complex in Tiptonville, Tennessee, filed a *pro se* motion for temporary restraining order and preliminary injunction, which was docketed as a complaint for violation of his civil rights, pursuant to 42 U.S.C. § 1983. (ECF No. 1.) However, Plaintiff neglected to submit either the \$400 civil filing fee required by 28 U.S.C. §§ 1914(a)-(b) or an application to proceed *in forma pauperis*.

The Court issued an order on May 14, 2015, directing Plaintiff to submit the required information or pay the entire filing fee within 30 days. (ECF No. 4.) Plaintiff was warned that if he failed to comply with the order in a timely manner, the Court will “deny leave to proceed *in forma pauperis*, assess the entire \$400 filing fee without regard to the installment

payment procedures, and dismiss the action without further notice, under Fed.R.Civ.P.41(b), for failure to prosecute.” (*Id.* At 2.)

The Plaintiff has not complied with the May 14, 2015 order, and the time for compliance has expired. Therefore, the motion for leave to proceed *in forma pauperis* is DENIED, and the complaint is hereby DISMISSED without prejudice, pursuant to Fed.R.Civ.P.41(b).

Notwithstanding the dismissal of this action, the Court is still required to assess the civil filing fee, since the responsibility for paying the filing fee accrues at the time a complaint is filed. McGore v. Wrigglesworth, 114 F.3d 601,607 (6th Cir. 1997); cf. In re Alea, 286 F.3d 378, 381-82 (6th Cir. 2002) (dismissal of civil action filed by prisoner pursuant to 28 U.S.C. § 1915(g) did not obviate the obligation to pay the filing fee).

Pursuant to 28 U.S.C. § 1915(b)(1), it is ORDERED that Plaintiff cooperate fully with prison officials in carrying out this order. It is further ORDERED that the trust fund officer at Plaintiff’s prison shall withdraw from Plaintiff’s trust fund account the sum of \$400 and forward that amount to the Clerk of this Court. If the funds in Plaintiff’s account are insufficient to pay the full amount of the civil filing fee, the prison official is instructed to withdraw all the funds in Plaintiff’s account and forward them to the Clerk of Court. On each occasion that funds are subsequently credited to Plaintiff’s account, the prison official shall immediately withdraw those funds and forward them to the Clerk of Court, until the civil filing fee is paid in full. The trust fund officer is not required to remit any balances less than \$10, unless that amount would constitute the final installment of the civil filing fee,

provided that any balance under \$10 is held in custody for purposes of paying the civil filing fee in this action and is promptly remitted to the Clerk when sufficient funds are deposited into Plaintiff's account to bring the balance to \$10.

Each time that the trust fund officer makes a payment to the Court as required by this order, he shall print a copy of the prisoner's account statement showing all activity in the account since the last payment under this order and file it with the Clerk along with the payment. All payments and account statements shall be sent to:

Clerk, United States District Court, Western District Tennessee,
111 South Highland Avenue, Rm. 262, Jackson, TN 38301

and shall clearly identify Plaintiff's name and the case number on the first page of this order.

The Clerk shall mail a copy of this order to the prison official in charge of prison trust fund accounts at Plaintiff's prison. The Clerk is further ORDERED to forward a copy of this order to the Warden of the Northwest Correctional Complex to ensure that the custodian of Plaintiff's inmate trust account complies with that portion of the PLRA pertaining to the payment of filing fees.

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

s/James D. Todd
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

