

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

KENNDRICK LEDBETTER,)	
)	
Plaintiff,)	
)	
VS.)	No. 2:17-cv-2122-STA-egb
)	
SHELBY COUNTY JAIL, ET AL.,)	
)	
Defendants.)	

ORDER DENYING LEAVE TO PROCEED IN FORMA PAUPERIS,
DISMISSING CASE, AND ASSESSING \$400 CIVIL FILING FEE

On February 13, 2017, Plaintiff Kenndrick Ledbetter, booking number 13146668, who is incarcerated at the Shelby County Criminal Justice Center (“Jail”) in Memphis, Tennessee, filed a pro se complaint pursuant to 42 U.S.A. § 1983 (ECF No. 1.) However, Plaintiff did not submit either the \$400 civil filing fee required by 28 U.S.C. §§ 1914(a)-(b) or an application to proceed in forma pauperis.

Under the Prisoner Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(a)-(b), a prisoner bringing a civil action must pay the filing fee required by 28 U.S.C. § 1914(a). Although the obligation to pay the fee accrues at the moment the case is filed, see *McGore v. Wrigglesworth*, 114 F.3d 601, 605 (6th Cir. 1997), partially overruled on other grounds by *LaFountain v. Harry*, 716 F.3d 944, 951 (6th Cir. 2013), the PLRA provides the prisoner the opportunity to make a “down payment” of a partial filing fee and pay the remainder in installments. § 1915(b)(2). However, in order to take advantage of the installment procedures, the prisoner must properly complete and submit to the district court, along with the complaint, an in forma pauperis affidavit containing a

certification by the prisoner trust account officer and a copy of his trust account statement for the last six months. 28 U.S.C. § 1915(a)(2).

The original document submitted by Plaintiff was not accompanied an affidavit to proceed in forma pauperis or by a certified copy of his trust account statement. Therefore, the Court issued an order on February 23, 2017, directing Plaintiff to either file a motion to proceed in forma pauperis and an inmate trust account statement in accordance with 28 U.S.C. § 1915(a)-(b) or pay the entire \$400 civil filing fee within 30 days. (ECF No. 3.) On March 27, 2017, Plaintiff filed a motion to proceed in forma pauperis, accompanied by his trust account statement for the last six months. (ECF No. 5.) Plaintiff's trust account statement showed, as of February 2, 2017, a balance in the account of \$653.27, which is more than sufficient to pay the filing fee. Therefore, on April 6, 2017, the Court entered an order denying Plaintiff leave to proceed in forma pauperis and directing Plaintiff to pay the full \$400 filing fee within 30 day. (ECF No. 8.)

Plaintiff has not complied with the April 6, 2017 order, and the time for compliance has expired. Therefore, the complaint is hereby **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule Civil Procedure 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*, 114 F.3d at 601; 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 **ORDERD** that the trust fund officer at

Plaintiff's prison shall withdraw from Plaintiff's trust fund account the sum of \$400¹ 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,
167 N. Main St. Rm. 242, Memphis, TN 38103

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 Administrator of the Jail 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.

¹Twenty-eight U.S.C. § 1914(a) requires a civil filing fee of \$350. However, pursuant to § 1914(b), "[t]he Clerk shall collect from the parties such additional fees only as are prescribed by the Judicial Conference of the United States." The Judicial Conference has prescribed an additional administrative fee of \$50 for filing any civil case, except for cases seeking habeas corpus and cases in which the Plaintiff is granted leave to proceed in forma pauperis under 28 U.S.C. § 1915. Because leave to proceed in forma pauperis has been denied in this case, Plaintiff is liable for the additional \$50 fee.

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: May 25, 2017