

United States District Court
Southern District of Texas

ENTERED

August 08, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BARRY PATRICK EMMETT,
(TDCJ #01383329)

Plaintiff,

vs.

STATE OF TEXAS CORPORATION, *et al.*,

Defendants.

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CIVIL ACTION NO. H-22-2504

MEMORANDUM OPINION AND ORDER

Barry Patrick Emmett, (TDCJ # 01383329), is an inmate of the Texas Department of Criminal Justice—Correctional Institutions Division. He has filed a civil rights action under 42 U.S.C. § 1983, alleging that the State of Texas, TDCJ, and the University of Texas Medical Branch are violating his constitutional and statutory rights by denying him proper medical care. (Docket Entry No. 1). He alleges that he has been denied his eyeglasses and denied the use of his cane, a magnifier, and the handicapped shower. (*Id.* at 6). He seeks an injunction to obtain his eyeglasses and to be transferred to the Estelle Unit, where he alleges there is a program for blind inmates. (*Id.* at 12). Emmett has neither paid the filing fee nor filed a motion to proceed without prepayment of the filing fee. Because Emmett is not eligible to proceed in this action without prepayment of the filing fee, this case will be dismissed.

Emmett’s action is governed by the Prison Litigation Reform Act, which was enacted, in part, to prevent prisoners from abusing the privilege of proceeding without prepaying the filing fee. *See Coleman v. Tollefson*, 575 U.S. 532, 535 (2015) (citing *Jones v. Bock*, 549 U.S. 199, 204 (2007)). Under the “three-strikes rule” established in the PLRA, a prisoner may not bring a civil action without prepaying the filing fee if, while incarcerated, the courts have dismissed three or

more of his civil actions or appeals as frivolous, malicious, or for failure to state a claim upon which relief may be granted, unless he is in “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

Court records reflect that, while he has been incarcerated, Emmett has filed more than three civil actions that have been dismissed as frivolous or for failure to state a claim upon which relief could be granted. *See, e.g., Emmett v. Hawthorn, et al.*, Appeal No. 11-20263 (5th Cir. Feb. 7, 2012); *Emmett v. Allred Unit, et al.*, Appeal No. 10-10715 (5th Cir. June 10, 2011); *Emmett v. McGuire, et al.*, Appeal No. 10-10437 (5th Cir. June 10, 2011); *Emmett v. Ebner, et al.*, Appeal No. 10-20772 (5th Cir. Apr. 29, 2011); *Emmett v. Swartz, et al.*, Civil No. 7:11-cv-49 (N.D. Tex. Sept. 30, 2014); *Emmett v. Julye, et al.*, Civil No. 4:13-cv-2693 (S.D. Tex. Oct. 4, 2013); *Emmett v. Ginsel, et al.*, Civil No. 4:12-cv-821 (S.D. Tex. Mar. 28, 2013); *Emmett v. Tatsch, et al.*, Civil No. 4:12-cv-1775 (S.D. Tex. Nov. 26, 2012); *Emmett v. TDCJ, et al.*, Civil No. 4:11-cv-2702 (S.D. Tex. May 16, 2012); *Emmett v. Werner, et al.*, Civil No. 4:11-cv-3783 (S.D. Tex. Oct. 27, 2011); *Emmett v. Kennedy, et al.*, Civil No. 4:11-cv-2000 (S.D. Tex. June 29, 2011). As a result, Emmett may not proceed with this civil action without prepaying the filing fee unless his pleadings show that he is in imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g); *Baños v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998) (per curiam). But while Emmett’s complaint alleges that he is being denied certain care related to his poor eyesight, his complaint does not allege that he is in imminent danger of serious physical injury. His action is barred by the three-strikes rule unless he prepays the applicable filing fee.

Emmett’s complaint, (Docket Entry No. 1), is dismissed without prejudice under 28 U.S.C. § 1915(g). Any pending motions are denied as moot. Emmett may move to reinstate this case only if he prepays the full amount of the filing fee for a civil action (\$402.00) within 30 days from

the date of this order. The court certifies that any appeal from this order is not taken in good faith for purposes of 28 U.S.C. § 1915(a)(3). **The Clerk will provide a copy of this order to the Manager of the Three Strikes List for the Southern District of Texas at: [Three Strikes@txs.uscourts.gov](mailto:ThreeStrikes@txs.uscourts.gov).**

SIGNED on August 8, 2022, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is fluid and cursive, with a prominent loop at the end of the last name.

Lee H. Rosenthal
Chief United States District Judge