

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0691

RECOE HARRIS

VERSUS

**THE STATE OF LOUISIANA THROUGH THE
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,
ELAYN HUNT CORRECTIONAL CENTER**

Judgment Rendered: DEC 23 2014

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On Appeal from the Eighteenth Judicial District Court
In and for the Parish of Iberville
State of Louisiana
No. 72,590

Honorable Alvin Batiste, Jr., Judge Presiding

*** * * * ***

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

McCLENDON, J.

Recoe Harris, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (DPSC), housed at Elayn Hunt Correctional Center (EHCC), appeals a judgment of the district court that denied his petition for a writ of mandamus and stayed his tort action until he pays outstanding court costs. For the following reasons, we affirm.

On May 13, 2013, Mr. Harris filed a petition for damages against DPSC, alleging that he was injured when he slipped and fell in standing water in the shower area at EHCC. With his petition for damages, Mr. Harris filed a motion to proceed *in forma pauperis* that was granted by the district court. Thereafter, on September 16, 2013, the district court issued an order staying all proceedings in this matter, including service of process, until all costs of court due the clerk were paid.

On September 17, 2013, Mr. Harris filed a Petition for Writ of Mandamus to Clerk of Court requesting that a writ of mandamus issue directing the clerk of court to process the pleadings filed by Mr. Harris. Specifically, Mr. Harris alleged that he was a pauper with a zero balance in his inmate banking account and that the clerk incorrectly advised him that no action would be taken on his filing until the full filing fee was paid. Following a hearing on October 3, 2013, the district court denied the petition for a writ of mandamus and again ordered that the matter be stayed as to Mr. Harris until he made payment of the outstanding court costs. Judgment to that effect was signed on October 9, 2013, and Mr. Harris appealed.

In his appeal, Mr. Harris contends that the district court erred in staying this matter pending payment of all court costs in advance.¹ He alleges that he

¹ We consider Mr. Harris's constitutionality argument as being abandoned, as he has failed to brief it on appeal. "All assignments of error and issues for review must be briefed. The court may consider as abandoned any assignment of error or issue for review which has not been briefed." Rule 2-12.4B(4) of the Louisiana Uniform Rules-Court of Appeal. Nonetheless, in **Warren v. Easter**, 05-0441 (La.App. 1 Cir. 9/23/05), 914 So.2d 586, we agreed with **Rhone v. Ward**, 39,701 (La.App. 2 Cir. 5/11/05), 902 So.2d 1258, wherein the court observed that the automatic stay provision does not affect any suspect class or involve any fundamental right, and is rationally related to the legitimate state interest of lessening the burdens presented by nuisance prisoner suits. The court thus found that the provision neither violates equal protection

complied with all statutory requirements to proceed *in forma pauperis* and that only a partial filing fee is required as provided in LSA-C.C.P. art. 5181.² On the other hand, DPSC acknowledges that LSA-C.C.P. art. 5181, which provides for a sliding scale for payment, is the general rule for an inmate's payment of court fees, but argues that LSA-C.C.P. art. 5181 is inapplicable in this matter. Instead, DPSC contends that LSA-R.S. 15:1186 is the specific statute that applies herein.

Louisiana Revised Statutes 15:1186 provides, in pertinent part:

A. (2) If a prisoner brings a civil action or files an appeal or writ application in forma pauperis as authorized by Paragraph (A)(1), the prisoner shall still be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of twenty percent of the greater of the average monthly

guarantees nor unconstitutionally impairs a prisoner's right of access to the courts. **Warren**, 05-914 So.2d at 587.

² Louisiana Code of Civil Procedure Article 5181 provides:

A. Except as provided in Paragraph B of this Article, an individual who is unable to pay the costs of court because of his poverty and lack of means may prosecute or defend a judicial proceeding in any trial or appellate court without paying the costs in advance or as they accrue or furnishing security therefor.

B. In the event any person seeks to prosecute a suit in a court of this state while incarcerated or imprisoned for the commission of a felony without paying the costs in advance as they accrue or furnishing security thereof, the court shall require such person to advance costs in accordance with the following schedule:

Prisoner's Present Assets		Advance Cost To Be Paid	
Minimum Amount	Maximum Amount	Minimum Amount	Maximum Amount
\$ 0.00	\$ 20.00	\$ 0.00	\$ 3.00
\$ 20.01	\$ 45.00	\$ 3.00	\$ 9.00
\$ 45.01	\$ 65.00	\$ 9.00	\$ 15.00
\$ 65.01	\$ 85.00	\$ 15.00	\$ 21.00
\$ 85.01	\$105.00	\$ 21.00	\$ 27.00
\$105.01	\$125.00	\$ 27.00	\$ 33.00
\$125.01	\$145.00	\$ 33.00	\$ 39.00
\$145.01	\$165.00	\$ 39.00	\$ 45.00
\$165.01	\$185.00	\$ 45.00	\$ 51.00
\$185.01	\$205.00	\$ 51.00	\$ 57.00
\$205.01	\$225.00	\$ 57.00	\$ 63.00
\$225.01	\$245.00	\$ 63.00	\$ 69.00
\$245.01	\$265.00	\$ 69.00	\$ 75.00
\$265.01	\$285.00	\$ 75.00	\$ 81.00
\$285.01	\$305.00	\$ 81.00	\$ 87.00
\$305.01	\$325.00	\$ 87.00	\$ 93.00
\$325.01	\$345.00	\$ 93.00	\$ 99.00
\$345.01	\$365.00	\$ 99.00	\$105.00
\$365.01		Up 105.00 to all advance cost.	

C. The court for good cause shown may require a prisoner to pay more or less advance cost than is required by the schedule in Paragraph B of this Article if the court finds that the prisoner's prior financial record makes reliance on his present economic status inappropriate.

deposits to the prisoner's account, or the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the petition, notice of appeal, or writ application.

....

B. (2)(a) The order granting a prisoner's request to proceed in forma pauperis automatically stays all proceedings, including any service of process, until all costs of court or fees due the clerk by the prisoner in this matter are paid. During the pendency of the stay the prisoner may not take any action to prosecute the suit, including but not limited to filing any pleadings, discovery, or motions other than a motion for voluntary dismissal or a motion to lift the stay because all costs have been paid.

....

E. In actions to which this Part applies, the provisions of this Section, to the extent of any conflict with those of Code of Civil Procedure Article 5181 et seq., apply to the payment of filing fees and costs.

We find that this statute is clear and unambiguous and requires that even with pauper status "the prisoner shall still be required to pay the full amount of a filing fee." LSA-R.S. 15:1186A(2). Further, in accordance with the plain wording of the statute, "[t]he order granting a prisoner's request to proceed in forma pauperis automatically stays all proceedings, including any service of process, until all costs of court or fees due the clerk by the prisoner in this matter are paid." LSA-R.S. 15:1186B(2)(a). Additionally, LSA-R.S. 15:1186E specifically provides that LSA-R.S. 15:1186 applies when a conflict exists with LSA-C.C.P. art. 5181, *et seq.*

We find that the district court did not err in staying this matter until Mr. Harris has paid the outstanding court costs. Accordingly, we affirm the October 9, 2013 judgment of the district court. Costs of this appeal are assessed to Recoe Harris.

AFFIRMED.