

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2014 CA 0692

MAYNARD JOHNSON

VERSUS

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

Judgment Rendered: DEC 23 2014

On Appeal from the
18th Judicial District Court
In and for the Parish of Iberville
State of Louisiana
No. 72653

Honorable Alvin Batiste, Jr., Judge Presiding

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BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

DRAKE, J.

Appellant, Maynard Johnson, an inmate in the custody of the Louisiana Department of Public Safety and Corrections (Department), housed at Elayn Hunt Correctional Center (Hunt) in St. Gabriel, Louisiana, appeals a judgment of the district court that denied a petition for a writ of mandamus that was directed to the Iberville Parish Clerk of Court. Based on our review of the record, we affirm the trial court's judgment.

FACTS AND PROCEDURAL HISTORY

Mr. Johnson originally filed a civil suit against the Department and Hunt based on a slip and fall injury while housed at Hunt. In connection with that suit, Mr. Johnson filed a motion to proceed in forma pauperis. On July 19, 2013, the trial court granted the in forma pauperis motion and stayed all proceedings until the filing fee was paid by Mr. Johnson according to La. R.S. 15:1186(B)(2)(a). The order permitted partial payment of the filing fee. Mr. Johnson did not pay any portion of the filing fee. On September 17, 2013, Mr. Johnson filed a petition and requested that a writ of mandamus be issued to the Iberville Clerk of Court to process his pleadings claiming that he owed no fees.¹

A hearing was held on the writ of mandamus on October 3, 2013. The trial court signed a judgment denying the writ of mandamus on October 9, 2013, and stayed the matter until Mr. Johnson paid the outstanding court costs. Although a

¹ The Department claims that the clerk of court was not named as a defendant, and no service was requested to be made on the clerk of court. The Department also claims that Mr. Johnson's filing of the writ of mandamus was an unauthorized use of summary proceedings. An objection to the unauthorized use of summary proceedings must be raised through a dilatory exception prior to answer or judgment by default. LSA-C.C.P. Arts. 926 and 928. Lack of procedural capacity must also be brought as a dilatory exception. La. C.C.P. art. 926(A)(6). All objections which may be raised through the dilatory exception are waived unless pleaded therein. La. C.C.P. art. 926(B). Dilatory exceptions must be pleaded prior to or in the answer. La. C.C.P. art. 928(A). The Department filed no exceptions even though they participated in the hearing on the writ of mandamus. The Department cannot now raise dilatory exceptions for the first time on appeal.

writ application to this court was originally filed, this court granted the writ stating that the judgment was a final, appealable judgment and remanded to the trial court for the limited purpose of permitting an appeal to be filed. It is from the October 9, 2013, judgment that Mr. Johnson appeals.

DISCUSSION

The trial court issued an order granting Mr. Johnson leave of court to proceed in forma pauperis, but the court stayed the proceedings as required by La. R. S. 15:1186(B)(2)(a) pending payment of all court costs and fees due the clerk of court. The order recognized that all prisoners granted in forma pauperis, including Mr. Johnson, were required to pay the \$250.00 initial filing fee, in amounts set forth in La. R.S. 15:1186 et seq, plus any court costs accruing after the filing of the suit. The order detailed the specific manner in which to pay the fees, including an initial partial filing fee.

Mr. Johnson filed a writ of mandamus, claiming that because he had a negative balance in his account he owed no filing fees as the clerk claimed. After a hearing, the trial court denied the writ and stayed the matter until all outstanding court costs were paid.

Mr. Johnson has assigned various errors on appeal, which essentially claim that the trial court erred in staying the matter until all court costs were paid due to its interpretation of the relevant statutes. He also asserts that both relevant pauper statutes permit him to avoid paying any court costs because his prisoner account at the time the petition for writ of mandamus was filed was negative and was exceedingly low in the six months preceding the filing of the petition. He relies on the fact that no specific amount was filled in on a blank regarding an amount to be paid the clerk of court within 20 days. The order also states that "following payment of initial partial filing fee, Centralized Inmate Banking Section for the

Louisiana Department of Public Safety and Corrections shall forward the monthly payment from the plaintiff's prison account exceeds [sic] **\$10.00** until the initial advance deposit of **\$250.00** and all costs accruing after filing are paid." Mr. Johnson claims that despite this pauper order, the clerk of court demanded full payment of the entire filing fee to proceed with the lawsuit.

Mr. Johnson relies on La. C.C.P. art. 5181(B), which provides in pertinent part:

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: ...

Mr. Johnson argues that the sliding scale set up by La. C.C.P. art. 5181(B) is set up for payment by inmates and is what is required for an inmate to pay as court costs.

Mr. Johnson also acknowledges the existence of La. R.S. 15:1186, which states:

A. (1) A prisoner who seeks to bring a civil action or file an appeal or writ application in a civil action without prepayment of fees or security must comply with all requirements for proceeding in forma pauperis except Code of Civil Procedure Article 5183(A)(2) and shall submit a certified copy of the trust fund account statement or institutional equivalent for the six-month period immediately preceding the filing of the petition, notice of appeal, or writ application obtained from the appropriate official of each prison at which the prisoner is or was confined.

(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 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.

(3) If a prisoner brings a civil action, files an appeal, or files a writ application in which the prisoner is not allowed to proceed as a pauper, the prisoner must pay the required costs in advance. If the prisoner does not pay the costs in advance, the civil action, appeal, or writ application shall be dismissed without prejudice. If the action is

dismissed pursuant to this Paragraph, the filing of the suit shall not be considered an interruption of prescription for purposes of Civil Code Article 3463.

B. (1) After payment of the initial partial filing fee, as required by Paragraph (A)(2) of this Section, the prisoner shall be required to make monthly payments of twenty percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds ten dollars until the filing fees are paid. In no event shall the filing fee collected exceed the amount of fees permitted by statute.

(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.

(b) If at any time during the pendency of the action additional costs of court or fees due the clerk by the prisoner accrue and are unpaid by the prisoner, then upon order of the court ex proprio motu or upon motion of the clerk or any other party, the action may be stayed as provided herein until all such additional costs are paid.

(c) If the prisoner does not pay the full court costs or fees within three years from when they are incurred, the suit shall be abandoned and dismissed without prejudice. This provision shall be operative without formal order, but, on the court's own motion or upon ex parte motion of any party, the clerk or other interested person by affidavit which provides that the full court costs and fees have not been paid within three years from when they were incurred, the trial court shall enter a formal order of dismissal as of the date of its abandonment. The order shall be served on the plaintiff pursuant to Code of Civil Procedure Article 1313 or 1314, and the plaintiff shall have thirty days from date of service to move to set aside the dismissal. However, the trial court may direct that a contradictory hearing be held prior to dismissal.

(d) The automatic stay shall not apply only if the court makes a written finding that:

(i) The suit is a proceeding for judicial review brought pursuant to R.S. 15:574.11 or R.S. 15:1177;

(ii) The suit is a post-conviction relief or habeas corpus proceeding challenging the fact or duration of confinement in prison; or

(iii) The inmate is in imminent danger of serious physical injury, the suit solely seeks injunctive relief to avoid the danger, and relief is available in the suit which will avert the danger.

C. Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the allegation of poverty is untrue, or the action or appeal is frivolous, is malicious, fails to state a cause of action, seeks monetary relief against a defendant who is immune from such relief, or fails to state a claim upon which relief can be granted.

D. If the judgment against a prisoner includes the payment of costs, the prisoner shall be required to pay the full amount of the costs ordered and in the same manner as is provided for filing fees. In no event shall the costs collected exceed the amount of the costs ordered by the court.

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.

F. If a prisoner has at least three dismissals as described in R.S. 15:1187 but the prisoner does not have three dismissals that are final under that Section, and, further, if the prisoner is disqualified from proceeding as a pauper either in federal court by operation of 28 USC 1915(g) or in the courts of another state by operation of a similar law of that state, then the court on its own motion may, or on motion of a party shall, stay all proceedings in any other prisoner suit or appeal in which the prisoner is proceeding as a pauper until such time as the dismissals become final. This Subsection shall not apply if the court finds that the prisoner is in imminent danger of serious physical injury.

Mr. Johnson interprets both statutes to require him to pay nothing as the filing fee. He claims that the partial initial filing fee due from him is zero, because his account is zero. In other words, 20% of zero is nothing. Mr. Johnson claims that he owed no fees to the clerk of court.

Although Mr. Johnson asserted constitutional issues at the trial court level, the issues raised before this court are the proper interpretation of La. R.S. 15:1186 and La. C.C.P. art. 5181. Therefore, the following principles of statutory interpretation are relevant and applicable herein. The function of statutory interpretation and the construction to be given to legislative acts rests with the

judiciary. *Livingston Parish Council on Aging v. Graves*, 12-0232 (La. 12/4/12), 105 So. 3d 683, 685. The fundamental question in all cases of statutory interpretation is legislative intent and the ascertainment of the reason or reasons that prompted the legislature to enact the law. *In re: Succession of Boyter*, 99-0761 (La. 1/7/00), 756 So. 2d 1122, 1128. The rules of statutory construction are designed to ascertain and enforce the intent of the legislature. *Id.*; *See also Stogner v. Stogner*, 98-3044 (La. 7/7/99), 739 So. 2d 762, 766. Legislation is the solemn expression of legislative will, and therefore, interpretation of a law involves primarily a search for the legislature's intent. La. R.S. 1:4; La. C.C. art. 2; *Lockett v. State, Dept. of Transp. and Development*, 03-1767 (La. 2/25/04), 869 So. 2d 87, 90 (*overturned, on other grounds, due to Legislative Action, La. R.S. 13:5106*). Moreover, the legislature is presumed to act with full knowledge of well-settled principles of statutory construction. *See Catahoula Parish School Bd. v. Louisiana Machinery Rentals, LLC*, 12-2504 (La. 10/15/13), 124 So. 3d 1065, 1073. When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. La. C.C. art. 9; *Lockett*, 869 So. 2d at 90-91; *Conerly v. State*, 97-0871 (La. 7/8/98), 714 So. 2d 709, 710-11. This court has repeatedly found that, as a general rule of statutory interpretation, a specific statute controls over a broader, more general statute. *Catahoula Parish Sch. Bd.*, 124 So. 3d at 1079. Furthermore, in construing a statute, an appellate court is bound to consider all parts together, giving effect to all parts, if possible, not construing as surplusage any sentence, clause or word, if a construction can be legitimately found which will give meaning to and preserve all words of the statute. *Rebel Distributors Corp. v. LUBA Workers' Comp.*, 13-0749 (La. 10/15/13), 144 So. 3d 825, 840 n.23.

Louisiana Code of Civil Procedure article 5181 was last amended in 1984. The Prison Litigation Reform Act (PLRA), La. R.S. 15:1181-1190, based on a parallel federal act, was enacted in 1997 to curtail baseless or nuisance suits by prisoners. *Pope v. State*, 99-2559 (La. 6/29/01), 792 So. 2d 713, 720 n.16. On April 18, 2002, the legislature enacted into law Act 89 of the 1st Extraordinary Session of 2002, which amended the provisions of La. R.S. 15:1186. The rules of statutory construction presume that the legislature knew what was in La. C.C.P. art. 5181 when it enacted Act 89 that included an automatic stay on lawsuits by prisoners proceeding as paupers until payment of all court costs. La. R.S. 15:1186(B)(2)(a). With regard to the automatic stay, the second circuit has stated:

[T]he purpose of the PLRA is to curtail baseless and nuisance suits by prisoners. Reducing such suits and lessening the burdens such suits place on our court system and judicial resources are legitimate state interests. The automatic stay provision furthers these state interests by requiring indigent prisoners to pay the costs of litigation as they accrue. This discourages prisoners from filing suits that lack merit and that are filed for recreational or harassment purposes. It also discourages the filing of unnecessary motions and discovery requests that prolong litigation, increase the cost for litigants, and strain limited judicial resources. By knowing that their civil suit will be stayed pending payment of costs and fees associated with litigation, prisoners who might otherwise file countless unworthy suits are led to weigh the costs of litigation to determine whether they have a claim worthy of pursuit and expenditure of their limited monetary resources. For these reasons, we find that the automatic stay provision of La. R.S. 15:1186(B)(2) is supported by a rational basis reasonably related to a governmental interest and does not violate equal protection under our state constitution.

Rhone v. Ward, 39,701 (La. App. 2 Cir. 5/11/05), 902 So. 2d 1258, 1262 writ granted, cause remanded, 05-1651 (La. 1/13/06), 920 So. 2d 217 (*Rhone I*). On remand, the second circuit in that case rejected Rhone's argument that the application of the statute did not apply to his suit. *Rhone v. Ward*, 39,701 (La. App. 2d 4/12/06), 926 So. 2d 774, 778-79, writ denied, 06-1227 (La. 9/29/06), 937

So. 2d 861 (*Rhone II*). In *Rhone v. Ward*, 45,008 (La. App. 2d Cir. 2/3/10), 31 So. 3d 591, 593 n. 1, writ denied, 10-0474 (La. 4/30/10), 34 So. 3d 291. (*Rhone III*), the court noted that if a prisoner brings a civil action or files an appeal or writ application in forma pauperis, the prisoner shall still be required to pay the full amount of a filing fee. See La. R.S. 15:1186(A)(2).

This court addressed an issue similar to the present one in *Warren v. Easter*, 05-0441 (La. App. 1 Cir. 9/23/05), 914 So. 2d 586. In *Warren*, an inmate argued that the automatic stay provision of La. R.S. 15:1186(B)(2) was unconstitutional as it violated his right of access to the courts, La. Const. Art. I, § 22, and was contrary to the equal protection guaranteed in the constitution, La. Const. Art. I, § 3. *Warren*, 914 So. 2d at 587. This court agreed with *Rhone I* that the automatic stay provision did not affect any suspect class or involve any fundamental right and was rationally related to the legitimate state interest of lessening the burdens presented by nuisance prisoner suits. The court found the automatic stay provision was constitutional. *Warren*, 914 So. 2d at 587.

In the present case, Mr. Johnson has filed a civil action, and he has been granted in forma pauperis status. Louisiana Revised Statute 15:1186(B)(2)(a) requires that the proceedings be automatically stayed until all costs of court or fees due the clerk of court are paid. The only circumstances under which the action will not be stayed are when the court makes a written finding that:

- (i) The suit is a proceeding for judicial review brought pursuant to La. R.S. 15:574.11 or La. R.S. 15:1177;
- (ii) The suit is a post-conviction relief or habeas corpus proceeding challenging the fact or duration of confinement in prison; or;
- (iii) The inmate is in imminent danger of serious physical injury, the suit solely seeks injunctive relief to avoid the danger, and relief is available in the suit which will avert the danger.

La. R.S. 15:1186(B)(2)(d). None of these circumstances are present in this case. Instead, Mr. Johnson argues that no money is due the clerk of court since he had a negative balance in his account. Louisiana Revised Statute 15:1186(A)(2) requires an inmate in a civil action, **even after being granted in forma pauperis status**, to pay the full amount of the filing fee. The statute states, “[t]he 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 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... .” La. R.S. 15:1186(A)(2). (Emphasis added.)

Mr. Johnson argues that he had nothing in his account for the six months preceding the filing of the civil suit, so he owes nothing. Using the rules of statutory interpretation, this court must consider all parts of the statute together and preserve all words of the statute. *See Rebel Distributors*, 144 So. 3d at 840 n.23. We interpret the entirety of La. R.S. 15:1186 to require an inmate to pay the entire filing fee and that the stay is to be in effect automatically until all that is owed the clerk of court is paid. The statute permits an inmate who has been granted pauper status to pay the fees owed the clerk of court in increments, much like a payment plan, but it does not permit the inmate to avoid paying the filing fees totally. The statute clearly provides for the consequences of not paying the full court costs or filing fees. “If the prisoner does not pay the full court costs or fees within three years from when they are incurred, the suit shall be abandoned and dismissed without prejudice.” La. R.S. 15:1186(B)(2)(c). Reading the entirety of the statute, we agree with the trial court that the matter is to be stayed until the court costs and fees are paid. The prisoner has three years to accomplish payment of those costs and fees.

Furthermore, La. R.S. 15:1186(E) sets forth that this portion of the PLRA applies to the extent it conflicts with La. C.C.P. art. 5181 et seq. Therefore, Mr. Johnson's argument that there is a conflict between La. R.S. 15:1186 and La. C.C.P. art. 5181 is without merit.

CONCLUSION

For the reasons set forth herein, we find that the automatic stay provision of La. R.S. 15:1186(B)(2) applies to prisoner pauper litigation until all costs or fees owed the prisoner are paid. The stay originally imposed shall remain in effect, and we affirm the judgment of the trial court. Costs of the appeal are assessed to the appellant, Maynard Johnson.

AFFIRMED.