

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

Kenneth THUNDERBIRD,
Plaintiff-Appellant,

v.

STATE OF OREGON,
by and through the
Department of Corrections,
Defendant-Respondent.

Marion County Circuit Court
15CVADM; A161291

Audrey J. Broyles, Judge pro tempore.

Submitted December 19, 2016.

Kenneth Thunderbird filed the brief for appellant *pro se*.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Christopher A. Perdue, Assistant Attorney General, filed the brief for respondent.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Shorr, Judge.

PER CURIAM

Reversed and remanded.

PER CURIAM

Plaintiff, who is incarcerated, sought to file an action against the Oregon Department of Corrections and certain state employees. He requested a waiver of fees to file the action because he was indigent. The trial court denied his request based on its determination that plaintiff had filed multiple cases against the state. Plaintiff appeals the denial of his fee-waiver request. The state concedes the error.

Under ORS 30.643, a court may waive or defer fees and court costs for an inmate who seeks to file an action against a public body. Under ORS 30.645(1), a court

“may not waive or defer an inmate’s fees or court costs under ORS 30.643 if the inmate has, on three or more prior occasions while incarcerated or detained in any correctional facility, filed an action against a public body in a court of this state that was dismissed on the grounds that the action:

“(a) Was frivolous or malicious;

“(b) Failed to state a claim upon which relief could be granted; or

“(c) Sought monetary relief from a defendant who is immune from a claim for monetary relief.”

The trial court’s denial of plaintiff’s fee-waiver request appears to have been based on ORS 30.645(1). However, the state concedes that only two, of the prior six, cases filed by plaintiff qualify under ORS 30.645(1) as actions against a public body that were dismissed under the terms provided in that statute. We agree with and accept the state’s concession. Accordingly, we reverse and remand for the trial court to reconsider plaintiff’s fee-waiver request under ORS 30.643.

Reversed and remanded.