

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted June 25, 2024*

Decided June 27, 2024

Before

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-2483

NIRIN WALLS,
Plaintiff-Appellant,

v.

BRETT WELLS, et al.,
Defendants-Appellees.

Appeal from the United States District
Court for the Northern District of
Illinois, Western Division.

No. 23 C 50054

Iain D. Johnston,
Judge.

ORDER

Nirin Walls, an Illinois prisoner, filed with the district court a request to sue correctional officers in forma pauperis (IFP). The request, if granted, would have allowed Walls to pay the filing fee in installments over time, rather than all upfront. *See* 28 U.S.C. § 1915. Even though Walls had no money in his prison trust account at the

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

time he filed suit, in the district court's view Walls could have anticipated this lawsuit and saved up to pay the \$402 filing fee for it. Because the district court abused its discretion in imposing this save-up obligation on Walls, we vacate and remand.

Walls sued in February 2023, accusing correctional officers of violating his federal constitutional and statutory rights by disregarding a seizure condition. He applied for leave to proceed without prepaying the filing fee by completing an IFP application and financial affidavit. Under 28 U.S.C. § 1915(a), these documents had to show that Walls "is" unable to pay the filing fee, \$402. His documents reflect, and a correctional officer certified, that when he sued, he had \$0.45 in his account. His application also included statements from his prison trust accounts for the preceding six months, from August 2022 to February 2023. These statements are useful because, under § 1915(b)(1), if the court granted IFP status to Walls, he must pay as an initial partial payment 20% of "the greater of" the "average monthly deposits" or the "average monthly balance" over the prior six months. For Walls, in the preceding six months he received average monthly deposits (in the form of gifts) of about \$200 (totaling around \$1300). An average of \$90 was removed monthly (or about \$540 total) to pay installments on filing fees he owed in other litigation; of the remaining balance (slightly over \$700), Walls spent most of it on commissary items. In the month before Walls sued, he made just one purchase from commissary, for \$4, while \$154 was removed for legal fees and postage. During this six-month look-back, his monthly account balance averaged about \$60. It never exceeded \$372.

The district court denied his application. The court reasoned that, in a previous case in which it had granted Walls IFP status, it had warned Walls of a "duty to save" to pay for a filing fee if he became aware of a possible new suit:

[Walls is warned] that an inmate who can save up and pay the filing fee is not financially eligible for the privilege of IFP status. . . . For any future litigation Walls might contemplate . . . he is on notice of the duty to save . . . [I]f he receives enough income to pay the full \$402 fee and is aware of the factual basis of a lawsuit but then elects to spend those funds on personal items, he almost certainly will not be eligible to pay the fee in installments. . . . [T]his is the case even if Walls (understandably) would prefer to shop at the commissary, make other discretionary purchases, or send gifts to friends and family as statutory requirements for the payment of filing fees take precedence over these types of expenditures.

(cleaned up). Walls had been aware, the court said, of the possibility of this suit for the previous six months, while he pursued prison grievances. Thus, it concluded, if Walls had saved up money during the preceding six months, rather than spend it on discretionary items, he could afford paying the \$402 filing fee upfront. Walls moved multiple times for reconsideration, but the district court denied his motions, reiterating its view that Walls did not meet its standard of indigence.

On appeal, Walls argues that, in denying him IFP status, the district court abused its discretion by imposing on him a duty to save funds for a possible suit. We agree. Section 1915 does not impose on prisoners who are aware of a possible suit a “duty to save” for it. Under section 1915(a), a prisoner’s indigence is based only on the assets that the prisoner “possesses” at the time of suit and whether, based on those assets, the filer “is” unable to pay the filing fee. In a slightly different context, we have ruled that the statute calls for the examination only “of assets that may *currently* be used to pay the filing fee.” *Robertson v. French*, 949 F.3d 347, 349 (7th Cir. 2020) (emphasis added). The text is stated in “the present tense.” *Id.* at 350. At the time of suit, Walls had only \$0.45 and thus could not pay \$402 upfront.

Of course, prisoners cannot mislead a court about their current assets by intentionally depleting them to feign poverty before suing. Indeed, “[o]ur view would be different if there were evidence that [Walls had] intentionally deplet[ed] his trust account to avoid paying his filing fee. If that were happening, the district court would be entitled to deny *in forma pauperis* status.” *Sultan v. Fenoglio*, 775 F.3d 888, 891 (7th Cir. 2015) (citation omitted). But we see a difference between, on the one hand, insisting that a prisoner not spend down funds that are sufficient to pay a filing fee, and on the other, requiring that a prisoner acquire and save up funds in an account that is short of that fee.

That difference applies here: The district court did not suspect, let alone find, that in the six months before suing, Walls’s spending was unreasonably extravagant for a prisoner whose basic needs are already covered or that he deliberately depleted his funds to avoid the fee. It found only that Walls knew of a possible suit during the previous six months and did not change his behavior to save up for it. Further, Walls’s account balance never met the \$402 filing fee—the high point was \$372. Thus, at no time did he have the means to pay. And his financial activity in the month before he sued—comprised almost exclusively of preexisting legal debts and one \$4 discretionary purchase—shows that he did not maneuver to bootstrap his way into indigence. Finally, Walls plausibly tells us on appeal that he had been hopeful that the prison’s grievance

process would resolve this dispute and obviate the need to sue or pay a filing fee. Therefore, the record provides no basis for a conclusion that Walls knew he was going to sue and ramped up his spending to empty his account and appear impoverished before suing.

In reasoning that Walls had to save to pay the filing fee upfront, the district court cited two precedential decisions, but they are both inapplicable. In the first cited case, *Sanders v. Melvin*, 873 F.3d 957, 959–60 (7th Cir. 2017), we ruled that a prisoner who had “struck out” —by filing at least three prior suits or appeals that were dismissed as frivolous, malicious, or failing to state a claim—had to save up for his next suit. That result necessarily follows from the fact that a prisoner who has struck out is statutorily barred from proceeding IFP. *See id.*; 28 U.S.C. § 1915(g). But where a prisoner has not struck out, as with Walls, we assess finances “at the time the Act called for payment,” which is when the complaint is filed. *See, e.g., Robbins v. Switzer*, 104 F.3d 895, 898 (7th Cir. 1997). In the second cited case, *Lucien v. DeTella*, 141 F.3d 773, 776 (7th Cir. 1998), we ruled that when the district court *has* granted IFP status to a prisoner, the prisoner should “refrain” from spending his funds on personal items until his monthly installment fee has been remitted. But the district court here never granted Walls IFP status.

We close by observing that the district court hinted that Walls may have inadequately disclosed his finances by limiting his disclosure to only the past four months. To the extent that the district court made such a finding, it was clear error. The record shows that Walls’s application to proceed IFP includes a full, six-month account of his income and expenses, spanning the two facilities in which he resided.

We thus VACATE the district court’s denial of Walls’s application to proceed IFP and REMAND for reconsideration of the IFP application in accordance with this order and for any appropriate further proceedings.