

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-3291

Phillip Dewayne Stewart, ADC#151956

Plaintiff - Appellant

v.

Ronald John Stuckey, Correct Care Solutions (originally named as Ronald John Stuckey)

Defendant - Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:17-cv-00167-JLH)

JUDGMENT

Before WOLLMAN, COLLOTON and SHEPHERD, Circuit Judges.

It is hereby ordered that this appeal is dismissed for failure to prosecute. See Eighth Circuit Rule 3C.

Mandate shall issue forthwith.

March 28, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-3291

Phillip Dewayne Stewart, ADC#151956

Exhibit
23

Appellant

v.

Ronald John Stukey, Correct Care Solutions (originally named as Ronald John Stuckey)

Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:17-cv-00167-JLH)

ORDER

This court has previously determined that Appellant has three "strikes" under 28 U.S.C. § 1915(g). Accordingly, Appellant may not proceed in this appeal without first paying the full appellate docketing fee. Appellant is directed to pay to the Clerk of the United States District Court the appellate docketing fee of \$505, or to file a pleading in this court explaining why Appellant is eligible to proceed without pre-payment of the fee. If appellant fails to either pay the fee or respond to this order within 30 days of the date of this order, the appeal will be dismissed for failure to prosecute. Compliance is due November 22, 2017.

October 23, 2017

Order Entered under Rule 27A(a):
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

EXHIBIT (13)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

PHILLIP DEWAYNE STEWART, ADC #151956

PLAINTIFF

v.

No. 5:17CV00167 JLH/JTR

RONALD JOHN STUKEY,
Correct Care Solutions

DEFENDANT

ORDER

The plaintiff's motion for reconsideration is DENIED. Document #9.

IT IS SO ORDERED this 31st day of August, 2017.


UNITED STATES DISTRICT JUDGE

~~Exhibit (9)~~ Exhibit (9) (9)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

PHILLIP DEWAYNE STEWART, ADC #151956

PLAINTIFF

v.

No. 5:17CV00167 JLH/JTR

RONALD JOHN STUKEY,
Correct Care Solutions

DEFENDANT

OPINION AND ORDER

Phillip Dewayne Stewart is a prisoner in the Ester Unit of the Arkansas Department of Correction. He has filed a *pro se* § 1983 complaint and two applications to proceed *in forma pauperis*. Documents #1, #2, & #4.

The Prison Litigation Reform Act provides that a prisoner cannot proceed *in forma pauperis* “if the prisoner has on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

Prior to filing this lawsuit, Stewart filed at least four cases that were dismissed for failing to state a claim upon which relief may be granted. *See Stewart v. Evans*, 5:16CV00081 (E.D. Ark. dismissed March 24, 2016); *Stewart v. Hobbs*, 6:15CV6023 (W.D. Ark. dismissed Jan. 26, 2016); *Stewart v. Murphy*, 6:14CV6077 (W.D. Ark. dismissed March 15, 2015); *Stewart v. Hobbs*, 5:13CV00381 (E.D. Ark. dismissed Jan. 31, 2014).

Nevertheless, Stewart may proceed *in forma pauperis* if he falls under the “imminent danger” exception to the three strikes rule. *See* 28 U.S.C. § 1915(g). Stewart alleges that, for seven days in February of 2017, defendant Dr. Ronald Stukey failed to renew his prescription for Nortriptyline. Document #2.

Exhibit 10

Nothing in the Complaint suggests that Stewart was in imminent danger when he filed this action, four months later, on June 19, 2017. *See Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998) (explaining that the prisoner must be in imminent danger “at the time of filing” and that “[a]llegations that the prisoner has faced imminent danger in the past are insufficient to trigger [the] exception to § 1915(g).” Further, a temporary delay in receiving prescription medications, by itself, does not constitute a constitutional violation; deliberate indifference to serious medical needs is required. *See, e.g., Hines v. Anderson*, 547 F.3d 915, 920-21 (8th Cir. 2008); *Zentmyer v. Kendall Cnty., Ill.*, 220 F.3d 805, 810-11 (7th Cir. 2000); *Ervin v. Busby*, 992 F.2d 147, 150-51 (8th Cir. 1993).

IT IS THEREFORE ORDERED THAT:

1. Stewart’s applications to proceed *in forma pauperis* (Documents #1 & #4) are denied, and his complaint (Document #2) is dismissed without prejudice.
2. If Stewart wishes to continue this case, he must, **within thirty days of the entry of this Opinion and Order**: (a) pay the \$400 filing fee in full, noting the above case style and number; and (b) file a motion to reopen the case.
3. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal would not be taken in good faith.

IT IS SO ORDERED this 16th day of August, 2017.

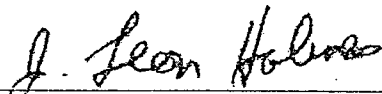

UNITED STATES DISTRICT JUDGE

Exhibit (4)

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

PHILLIP DEWAYNE STEWART,
ADC #151956

PLAINTIFF

v.

No. 5:17CV00167 JLH/JTR

RONALD JOHN STUCKEY,
Correct Care Solutions

DEFENDANT

ORDER

Plaintiff's Motion to Correct Defendant in the Complaint (*Doc. 3*) is GRANTED, and the Clerk is directed to change Defendant's last name to "Stukey."

IT IS SO ORDERED this 16th day of August, 2017.


UNITED STATES MAGISTRATE JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-3291

Phillip Dewayne Stewart, ADC#151956

EXhibit (30)

Appellant

v.

Ronald John Stukey, Correct Care Solutions (originally named as Ronald John Stuckey)

Appellee

Appeal from U.S. District Court for the Eastern District of Arkansas - Pine Bluff
(5:17-cv-00167-JLH)

ORDER

The petition for rehearing by the panel is denied.

May 08, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans