

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13205-J

MICHAEL J. WAPPLER,

Plaintiff - Appellant,

versus

WAYNE IVEY,
OFFICER HATTON,
OFFICER BRISBEE, Deputy,
UNKNOWN DEFENDANTS,
BREVARD COUNTY,
a political entity of the State of Florida, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Michael J. Wappler has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective September 21, 2018.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Davina C. Burney-Smith, J, Deputy Clerk

FOR THE COURT - BY DIRECTION

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MICHAEL J. WAPPLER,

Plaintiff,

v.

Case No: 6:18-cv-1027-Orl-37KRS

WAYNE IVEY, et al.,

Defendants.

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ORDER

This cause is before the Court on the Civil Rights Complaint (Doc. 1) filed by Plaintiff pursuant to 42 U.S.C. § 1983. Plaintiff is a pretrial detainee seeking to proceed *in forma pauperis*. (Doc. 2).

Section 1915(g) of Title 28 limits a prisoner's ability to bring a civil action *in forma pauperis* under certain circumstances:

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section 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). Thus, if a prisoner has had three or more cases dismissed for one of the recited reasons, he cannot proceed *in forma pauperis* and must pay the filing fee in full at the time the lawsuit is initiated. *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002); *see also Casey v. Scott*, 493 F. App'x 1000, 1000 (11th Cir. 2012) (applying three-strike bar

to pretrial detainee). Consequently, courts have a responsibility to dismiss cases, even *sua sponte*, under 28 U.S.C. § 1915(g). See, e.g., *Casey*, 493 F. App'x at 1001.

The Court takes judicial notice of three federal district court cases previously brought by Plaintiff that were dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted: (1) 5:01-cv-60010-MOB (W.D.Mich.), *aff'd Wappler v. Carniak*, 24 F. App'x 294 (6th Cir. 2001); (2) 6:18-cv-479-Orl-40GJK, Doc. 4 (M.D. Fla. Apr. 12, 2018); and (3) 6:18-cv-661-Orl-37TBS, Doc. 6 (M.D. Fla. May 23, 2018).

Based upon these prior dismissals and Plaintiff's failure to allege that he is under imminent danger of serious physical injury, he is not permitted to proceed *in forma pauperis* and was required to pay the filing fee at the time he initiated this action. Consequently, this case will be dismissed without prejudice. Plaintiff may initiate a new civil rights action by filing a new civil rights complaint form together with the full filing fee.

Accordingly, it is now **ORDERED AND ADJUDGED**:

1. This case is hereby **DISMISSED** without prejudice.
2. Plaintiff's Motion to Proceed *In Forma Pauperis* (Doc. 2) is **DENIED**.
3. The Clerk of the Court is directed to close this case and enter judgment accordingly.

DONE and **ORDERED** in Orlando, Florida on July 2, 2018.




ROY B. DALTON JR.
United States District Judge

Copies furnished to:

Unrepresented Party
OrlP-2

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from this filing is
available in the
Clerk's Office.**