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APPENDIX B

UNITED STATES COURT OF APPEAL

August 17 2022

FOR THE NINTH CIRCUIT

Molly C. DWYER, CLERK

U.S COURT OF APPEALS

MARIA HERTA

NO. 22-5559

Plaintiff-Appellant,

D.C. NO

3:22-cv-00156-LAB-RBB

Southern District of California

San Diego

v.

TERRIE E. ROBERTS,

ORDER

Defendant-Appellee.

Before: SCHROEDER, O'SCANNLAIN, and
FORREST, Circuit Judges.

Upon a review of the record and the response to the court's July 14, 2022 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (DOCKET ENTRY NO. 3), see 28 U.S.C. § 1915 (a), and dismiss this appeal as frivolous, pursuant, to 28 U.S.C. § 1915 (e)(2)(court shall dismiss case of anytime, if court determines it is frivolous or malicious).

DISMISSED

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APPENDIX C

UNITED STATES COURT OF APPEAL

July 14 2022

FOR THE NINTH CIRCUIT

Molly C. DWYER, CLERK
U.S COURT OF APPEALS

MARIA HERTA

NO. 22-55594

Plaintiff-Appellant,

D.C. NO

3:22-cv-00156-LAB-RBB

Southern District of California

San Diego

v.

TERRIE E. ROBERTS,

ORDER

Defendant-Appellee.

A review of the record reflects that this appeal maybe frivolous. This court may dismiss a case any time, if the court determines the case is frivolous. *See* 28. USC. § 1915 (e) (2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed R. App. P. 42(b), OR

(1) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure notice. *See* 9th Cir. R.42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss the appeal, pursuant to Federal rule of Appellate Procedure 42(b). If appellant submit any response to this order other than motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice

The briefing schedule for this appeal remains stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward. Appellant may use the enclosed forms for any motion to dismiss this appeal or statement that the appeal should go forward.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Allison Taylor

Deputy Clerk
Ninth Circuit Rule 27-7

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APPENDIX D

UNITED STATES COURT OF APPEAL

June 22 2022

FOR THE NINTH CIRCUIT

Molly C. DWYER, CLERK

U.S COURT OF APPEALS

MARIA HERTA

NO. 22-55594

Plaintiff-Appellant,

D.C. NO

3:22-cv-00156-LAB-RBB

Southern District of California

San Diego

v.

TERRIE E. ROBERTS,

ORDER

Defendant-Appellee.

A review of this court's docket reflect that the filing and docketing fees for this appeal due. Within 21 days after the date of this order, appellant shall pay to the district court the 505.00 filing and docketing fees for this appeal and file in this court proof of such payment or file in this court a motion to proceed in forma pauperis.

This filing of motion to proceed in forma pauperis will automatically stay the briefing schedule under Ninth Circuit rule 27-11.

The Clerk shall serve a Form 4 financial affidavit on appellant. If appellant fails to comply with this order, this appeal may be dismissed by the Clerk for failure to prosecute. See 9th Cir. R. 42-1.

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APPENDIX E

UNITED STATES COURT OF APPEAL

June 17 2022

FOR THE NINTH CIRCUIT

Molly C. DWYER, CLERK

U.S COURT OF APPEALS

MARIA HERTA

NO. 22-55594

Plaintiff-Appellant,

D.C. NO

3:22-cv-00156-LAB-RBB

Southern District of California

San Diego

v.

TERRIE E. ROBERTS,

TIME SCHEDULE
ORDER

Defendant-Appellee.

The parties shall meet the following time schedule.

Mon., August 15, 2022

Appellant's opening brief and excerpts of record shall be served and filed pursuant to FRAP 31 and 9th Cir. R. 31-2.1

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. See 9th Cir. R. 42-1.

FOR THE COURT:

MOLLY C. DWYER

CLERK OF COURT

By: John Brendan Sigel

Deputy Clerk

Ninth Circuit Rule 27-7

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARIA HERTA, CASE NO.22-cv-00156-LAB-RBB

Plaintiff,

v. ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS AND
DISMISSING ACTION WITH OUT PREJUDICE
[Dkt.4]

TERRIE E. ROBERTS,
Defendant,

Plaintiff Maria Herta filed the action along with a motion for leave to Proceed in Forma Pauperis. (Dkt.2). The court denied the motion without prejudice because it couldn't determine Herta's ability to pay the filling fee because she had provided an incomplete picture of her finances. (Dkt.3). In particular, that motion: 1) stated that Herta was self employed but listen no income in connection with that self employment; 2) failed to identify her average monthly expenses; and 3) didn't state the date of her last employment or the amount of her monthly pay from that employment. (*Id.* at 2).

The Court directed Herta to either pay the \$400 filling fee or file a new IFP motion resolving these issues and satisfying the Local Rules' requirements for such a motion. (*Id.at* 1-2

(citing CivLR 3.2)). The Court provided a link to a form that comply with the Local Rules if fully and accurately completed. (*Id.* at 1n.1).

Herta then filed a second motion to Motion to Proceed in forma Pauperis, on a a different form that she failed to completely fill.(Dkt.4). While she now provides an estimate of her monthly expenses, she still doesn't provide sufficient information regarding her income. Rather than identify her self-employment income. Herta simply removed any reference to her previously professed self-employment. If she is currently unemployed, CivLR 3.2 requires her to state the date of her last employment and her monthly income from that employment, but she didn't do that, either. Nor did she comply with that Rule's requirements relating to the disclosure of her assets. See CvLR 3.2(a)(4).

The motion is **DENIED**. And because Herta has failed to either pay the filing fee or file a complaint motion to proceed in forma pauperis despite the Court's prior instruction, this action is **DISMISSED WITHOUT PREJUDICE**. Because the dismissal is without prejudice, this order does not prevent Herta from refiling her claims as a new case, but the Clerk is directed to close this case.

IT IS SO ORDERED.

Dated: June 1, 2022

Hon. Larry Alan Burns
United States District Judge

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARIA HERTA, CASE NO.22-cv-00156-LAB-RBB
Plaintiff,

v. ORDER DENYING MOTION TO
PROCEED IN FORMA PAUPERIS AND
DISMISSING ACTION WITH OUT PREJUDICE
[Dkt.2]

TERRIE E. ROBERTS,
Defendant,

Plaintiff Maria Herta filed a Motion for leave to proceed in Forma Pauperis. Dkt. 2. Because the Motion gives an incomplete picture of Herta's finance. It is **DENIED WITHOUT PREJUDICE**.

Motion for leave to proceed in forma pauperis ("IFP") must establish that the litigant "cannot because of [her] poverty pay or give security for costs...and still be able to provide [her] self and dependents with the necessities of life." *Adkins v E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). Courts have discretion to grant or deny such applications. *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir.2015). In this District, the Local Rules set forth specific requirements regarding the content of an IFP motion. See CivLR 3.2

The Motion doesn't give the court enough information to determine whether

1.The District Court's website provides a form that would conform with the Local Rules (if fully and accurately completed). It can be found at [https://www.casd.uscourts.gov/_assets/pdf/forms/motions%20to%20 Proceed%20in%20for%20 Pauperis.pdf](https://www.casd.uscourts.gov/_assets/pdf/forms/motions%20to%20Proceed%20in%20for%20Pauperis.pdf)

requiring Herta to pay filing fees would make her unable to provide for herself and her dependent. She acknowledges she is self-employed and has a monthly income, but she doesn't list any income, aside from \$1.600 in monthly child support. She acknowledges she has expenses, but she doesn't identify her average monthly expenses. She doesn't state the date of her last employment or the amount of her monthly pay from that employment. CivLR 3.2(a)(2). Without each of these pieces of information, she can't carry her burden to demonstrate that she is unable to pay for filing fee.

The Motion is **DENIED WITHOUT PREJUDICE**. On or before April 29, 2022.

Herta must (1) pay the entire \$400 statutory and filing fee, or (2) file a new IPF motion resolving the issues the Court identified. If Herta does neither, her complaint will be dismissed without prejudice and this case will be closed.

IT IS SO ORDERED

DATED: MARCH 16, 2022

HON. LARRY ALAN BURNS
UNITED STATES DISTRICT JUDGE