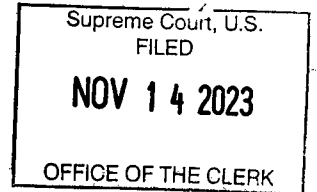


No. **23-6052** **ORIGINAL**

In The

Supreme Court Of The United States



LARRY BAILEY

181 BEN BAILEY ROAD

LONDON KY, 40744

PETITIONER

V.

WEST LAUREL WATER ASSOCIATION

1620 E. HAL ROGERS PARKWAY

LONDON KY, 40741

AND

KENTUCKY PUBLIC SERVICE COMMISSION

211 SOWER BOULEVARD

P.O. BOX 615

FRANKFORT KY, 40602-0615

RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

The Kentucky Supreme Court

PETITION FOR WRIT OF CERTIORARI

Larry Bailey
Pro se
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40744
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QUESTIONS PRESENTED

1). Whether the Franklin Circuit Court violated my constitutional rights to due process by denying my motion to proceed *in forma pauperis* IFP on notice of appeal. (Was I indigent when filing the complaint, but not indigent for appeal?).

PARTIES TO THE PETITION

Petitioner:

Larry Bailey
181 Ben Bailey Road
London Kentucky, 40744

Pro Se

Respondent1:

West Laurel Water Association
1620 E. Hal Rogers Parkway
London Kentucky, 40741

Represented by
Larry G. Bryson, 318 W. Dixie Street London KY, 40741.

Respondent 2

Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615

Frankfort Kentucky, 40602-0615

Represented by,
Nancy J. Vinsel, 211 Sowder Blvd
Frankfort Kentucky, 40601

RELATED CASES

*Larry Bailey v. Public Service Commission and West Laurel Water Association. No.
22-CI-00018. Franklin Circuit Court of Kentucky. Judgement entered, May 12th, 2022.

*Larry Bailey v. Public Service Commission and West Laurel Water Association. No.
27-CA-0758. Kentucky Court of Appeals. Judgement entered, September 19th, 2022.

*Larry Bailey v. Public Service Commission and West Laurel Water Association. No.
2022-SC-0533. Supreme Court of Kentucky. Judgement entered, August 16th, 2022.

57

58 **CORPORATE DISCLOSURE STATEMENT**

59 I am not a corporation and do not represent one.

60

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79 **Appendix B.** Circuit Court denied motion to proceed *in forma pauperis*.

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PETITION FOR A WRIT OF CERTIORARI

103 **Comes Now**, pro se, Larry Bailey, asking this court to grant certiorari to decide whether
104 the Franklin County Kentucky Circuit Court violated my constitutional right to a trial by denying
105 my IFP on notice of appeal.

106
107 **OPINIONS BELOW**

108 There are no published opinions on this case.

109
110 **JURISDICTION**

111 Pursuant to 28 U.S.C.A. § 2101

112 On August 16th 2023 the Kentucky Supreme Court denied discretionary review of my
113 case. The deadline for filing this petition is November 14th 2023.

114
115 **CONSTITUTIONAL AND STATUTORY PROVISIONS**

116 The Due Process Clause of the 14th Amendment of the U.S. Constitution guarantees the
117 right to be heard in court. [N]or shall any State deprive any person of life, liberty, or property,
118 without due process of law; nor deny any person within its jurisdiction the equal protection of the
119 laws.

120 KRS § 453.190(2) a poor person is someone [U]nable to pay the costs and fees of the
121 proceeding in which he is involved without depriving himself or his dependents of the necessities
122 of life, including food, shelter, or clothing.

123 Kentucky rules of civil procedure CR 5.05(4) If accompanied by a motion for leave to
124 proceed in forma pauperis and a supporting affidavit, and made in good faith, any matter to be
125 filed under these rules, including appeals, shall be considered filed on the date it is tendered.

Page 420 of the Kentucky Circuit Court Clerks Handbook (current at the time of filing)
When you receive a complaint, petition, or other document, and the pleading is accompanied by
a motion for leave to proceed in forma pauperis, instead of the required filing fees, treat the
pauper motion as a filing fee for purposes of opening the case. [kentucky-circuit-court-clerks-
manual-3f4c9e.pdf (pdf4pro.com)].

STATEMENT OF THE CASE

On December 27th, 2021, I mailed a complaint/administrative appeal with IFP to the
Franklin Circuit Court which was received by the Clerk on January 3rd, 2022. (Appendix D page
3.) The Clerk gave the filings to the judge on that same day but failed to document it until April
1st, 2022. (Appendix D page 3). The filing was due on January 10th, 2022, but the judge held my
filings until January 14th, 2022, then granted my IFP. (Appendix D page1). Although receiving
the filings (7) seven days before the due date the judge released them (4) four days after the due
date then **granted** my IFP. (Appendix D page 1). The Defendants filed a motion to dismiss
because my complaint was not filed on time. On February 16th we had a hearing and the judge
said he would consider the issue. On February 18th, 2022, I filed a petition to enter the tracking
information from the USPS registered mail proving the Clerk had received my complaint and
IFP on January 3rd. (Appendix D page 3 and Appendix F). Then on February 22nd 2022 the
Court dismissed my case for being filed late holding me responsible for the filing (Appendix F).
I filed a motion to reconsider, but the Court rejected it, ruling that I was still responsible for
ensuring the clerk performed her duties to file my complaint and that I had not provided proof
that the Clerk had received my complaint. (Appendix G).

Between December 27th, 2021 and January 14th 2022 I made several calls to the clerk and was told it had not been received, even after it had been given to the judge. At that point the clerk stated that when it did arrive, she would not file the complaint until the judge granted the IFP. When I advised her of the statute, she replied that it did not apply to circuit courts, only to appellate courts. And she did not file my case until the judge granted the IFP. (Appendix D page 1).

I filed a notice of appeal with IFP from the order dismissing my case in the Circuit Court. However, the same judge who granted my initial IFP denied my second IFP on notice of appeal. I filed a motion to reconsider or adjust the fee based on the sliding scale used by Kentucky Courts. That motion was denied, ruling that taxpayers should not have to pay for the appeal. (Appendix B). Pro se parties are not allowed to use the court's electronic docket to track their case. At that time, I still did not know about the role played by the judge in holding my filings past the deadline. That was not documented until April 1st, 2022. (Appendix D page 3).

I filed a *Gabbard* appeal in the Kentucky Court of Appeals. The Appellate Court affirmed the Circuit Court's order then later denied my motion to reconsider. (Appendix A).

Then I filed a motion for discretionary review in the Kentucky Supreme Court which was denied on August 16th 2023. (Appendix C).

REASONS FOR GRANTING THE PETITION

It is paramount to this petition to distinguish between my actual claim on notice of appeal and the reason the Circuit Court denied my IFP. My notice of appeal was based on the Circuit Court's dismissal of my case for being filed after the statutory deadline. However, the Circuit Court denied my IFP based on the merits of the case. It should also be noted that in Kentucky

appeals on IFPs are not argued on appeal. The courts do not have to consider evidence presented by the appellant.

1. The Franklin Circuit Court erred when denied my IFP based on its opinion of the merits of my case.

1). The 14th Amendment to the U.S. Constitution forbids any state to deny to any person the equal protection of the laws. And that all persons should be equally entitled to the ‘prevention and redress of wrongs.’ *Truax v. Corrigan*, 257 U.S. 312 (US. 1921). For poor people who cannot afford the court’s fees to access the courts we must rely on motions to proceed *in forma pauperis*. The courts in Kentucky use a sliding scale of indigency, or if the filer “[I]s unable to pay the costs and fees of the proceeding in which he is involved without depriving himself or his dependents of the necessities of life, including food, shelter, or clothing” in determining indigency for an IFP. KRS § 453.190(2). In my case the Circuit Court granted my initial IFP for the complaint, then denied the second identical IFP on notice of appeal based on its determination of the case merits.

Kentucky case law bars a court from denying an IFP based on its opinion of the merits of the case.

“[A] trial court must allow a qualifying appellant to proceed on appeal in forma pauperis, even when the trial court is of the opinion the appeal is frivolous. Otherwise, the result would be the trial court deciding the appeal for a poor person whereas a person paying the filing fee would have another court, an appellate court, review the issue. Windsor v. Com., 250 S.W.3d 306 (Ky. 2008).

Even if the case is frivolous the IFP should not be dismissed on the merits. *Peters v. Peters*, 728 S.W.2d 541 (Ky. App. 1987).

In federal courts an IFP is granted or denied without the assistance of statutory guidelines to determine who qualifies or does not qualify. An IFP can be denied by a federal court if the court determines the case is not in good faith. 28 USCA § 1915(3). Even if Kentucky Courts had the same authority, my case would have been in good faith because my notice of appeal explained that my appeal was based on the Court's erroneous dismissal for being filed after the filing deadline. That error is explained in the following section.

The Circuit Court erred when it dismissed my case for being filed after the deadline.

I mailed my complaint with the attached motion for IFP to the Franklin Circuit Court Clerk and it was received and signed for, 11 days before the filing deadline. (Appendix D page 3). Pursuant to Kentucky law any pleading received with an IFP is to be filed upon its receipt by the clerk. If accompanied by a motion for leave to proceed in forma pauperis and a supporting affidavit, and made in good faith, any matter to be filed under these rules, including appeals, shall be considered filed on the date it is tendered. CR 5.05(4). Pages 345-346 of the Kentucky Circuit Court Clerks Handbook (current at the time of filing) says that when a clerk receives a complaint, petition, or other document, and the pleading is accompanied by a motion to leave to proceed In Forma Pauperis, instead of the required filing fees, treat the pauper motion as a filing fee for purposes of opening the case. [kentucky-circuit-court-clerks-manual-3f4c9e.pdf (pdf4pro.com)]. The Kentucky Supreme Court in *Nanny v. Smith*, 260 S.W.3d 815 (Ky. 2008) opined that once a clerk has received a filing it is no longer the filer's responsibility to ensure the clerk performs his/her duties. In that case the Appellant, Nanny, hand-delivered her complaint to

219 the clerk who filed it four days later and one day after the deadline. The court said, “Nanny
220 complied with the spirit of the law and should not be punished for the clerk's failure to promptly
221 perform official duties mandated by statute and court rule.” I took precautions to ensure that my
222 appeal was mailed in accordance with the rules. I undoubtedly complied with the spirit of the
223 law to ensure my appeal was timely filed. After the clerk signed for my appeal, I no longer had
224 the responsibility to file the pleading because it became her responsibility.

225 In *Commonwealth v. Opell*, 3 S.W.3d 747 (Ky. App. 1999) the commonwealth mailed a
226 notice of appeal to the clerk who received it two days before the filing deadline. However, the
227 clerk failed to file it until one day after the deadline. The court ruled that the pleading was
228 considered filed when it was received by the clerk, opining “that was all that was required”.
229 Further, the court opined that otherwise, the timeliness of filing would be under the control of the
230 clerk’s personnel instead of the filer. (The Supreme Court denied review of that case). The court
231 in *Opell* cites *U.S. v. Solly*, 545 F.2d 874, 876 (3rd Cir. 1976), supporting its contention that a
232 pleading is filed when it is received, not when it is filed by the clerk. When the clerk signed for
233 my appeal, it should have been considered filed and the clerk should have marked it filed for that
234 date. **Not 11 days later.**

235 As persuasive authority, the court in *Helton v. Jerry’s Discount Inc.*, 2011 WL 6110208
236 (Ky. App. 2011) ruled that once a pleading has been received by a clerk it is his/her duty to
237 “promptly perform” his/her “required duties”. In that case the Appellant mailed her complaint
238 which was received by the clerk on the date of the filing deadline. However, the clerk failed to
239 file the pleading until two days after the deadline. That court said, “Helton ‘had neither the
240 power nor the duty to ensure that the clerk perform official duties, she was prevented by
241 circumstances beyond her control from having’ her complaint filed, and summons issued before

242 the statute of limitations expired.” Although I made frequent calls, I had no power to force the
243 clerk to file my appeal. I could not enter her office and assist her in filing the pleading. Beyond
244 making frequent calls there was absolutely nothing else I could do to ensure the clerk performed
245 her required duties.

246 Nonetheless, the Circuit Court ruled that it was my responsibility to ensure the case was
247 filed on time. (Appendix F).

248
249 **The Franklin Circuit Court violated my 14th Amendment right to trial under the**
250 **due process clause.**

251 The Circuit Court’s dismissal of my case was based on its judgment of the merits of my
252 case. That is barred by the Kentucky law. Even under federal law a court must weigh the causes
253 and merits of a case before they can dismiss an IFP on the merits of the case. My appeal was
254 based on an obvious clerical error which is not meritless. In my case the Court used a clerical
255 error to erroneously dismiss for a missed deadline. Then denied my IFP on notice of appeal to
256 ensure its dismissal would not be appealed. That was a misuse of its power and sets a dangerous
257 precedent because the Court of Appeals affirmed the action.

258
259 **There is no federal authority protecting indigent filers from potential abuse from**
260 **state courts that dismiss IFPs based on the merits of a case.**

261 Even states that have case law forbidding the practice of dismissing IFPs on the merits do
262 not have to enforce their own rule. Otherwise, like in my case, any state court in the country
263 could dismiss on any technicality and then deny an appeal to insure its ruling stands.

264 That is why this court should grant certiorari and give states guidance on the issue.

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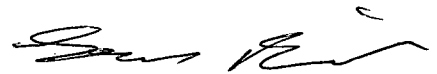
CONCLUSION

This Court should grant certiorari and make a ruling for state courts to follow on how or if they can deny an IFP based on the merits of the case.

This court should also send the issue back to Kentucky Courts for reconsideration based on this Court's ruling.

Respectfully filed,

November 14th, 2023.



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