

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 26 2019

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

FRED MARTIN WIMBERLEY,

Plaintiff-Appellant,

v.

RACHEL M. SACRAMENTO,

Defendant-Appellee.

No. 19-55117

D.C. No. 2:19-cv-00011-R-AS
Central District of California,
Los Angeles

ORDER

Before: TASHIMA, M. SMITH, and BENNETT, Circuit Judges.

The district court certified that this appeal is not taken in good faith and has denied appellant leave to proceed on appeal in forma pauperis. *See* 28 U.S.C. § 1915(a). On February 28, 2019, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and response to the court's February 28, 2019 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Fred Martin Wimberley,

CASE NUMBER

CV 19-00011-R (ASx)

PLAINTIFF(S)

v.

Rachel M. Sacramento

DEFENDANT(S)

ORDER RE REQUEST TO PROCEED
IN FORMA PAUPERIS

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby GRANTED.

Date

United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed *In Forma Pauperis* be DENIED for the following reason(s):

- ☐ Inadequate showing of indigency
☐ Legally and/or factually patently frivolous
☐ Other: _____

- ☒ District Court lacks jurisdiction
☐ Immunity as to _____

Comments:
see attachment

January 9, 2019

Date

/s/ Alka Sagar

United States Magistrate Judge

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby:

- ☐ GRANTED
☒ DENIED (see comments above). IT IS FURTHER ORDERED that:
☐ Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
☒ This case is hereby DISMISSED immediately.
☐ This case is hereby REMANDED to state court.

January 10, 2019

Date



United States District Judge

ATTACHMENT TO FORM CV73

Fred Martin Wimberly v. Rachel M. Sacramento

Case No. CV 19-0011-R ASx)

Plaintiff Fred Martin Wimberly seeks leave to file a complaint without prepayment of fees. (See Request to Proceed In Forma Pauperis ("IFP Request"), filed on January 2, 2019). The Court is persuaded that Plaintiff should be denied leave to proceed in forma pauperis.

As an initial matter, the complaint, which names as a Defendant, Rachel Sacramento, a legal analyst for the Los Angeles County Employees Retirement Association ("LACERA", challenges Plaintiff's 2009 California court divorce judgment awarding one-half of his LACERA pension to his ex-wife. Plaintiff's claims that the state court judgment is the product of a "grave and serious mistake" and that the "Brown Act" does not apply. This complaint fails to state any basis for Federal Court jurisdiction. See Fern v. Turman, 736 F.2d 1367, 1368 (9th Cir. 1984) (claims for portions of ex spouses' retired pay as "claims [that] arise entirely under state law . . . [and] therefore not claims arising under the laws of the United States." (citations omitted). Moreover, diversity jurisdiction is not applicable since both Plaintiff and his ex-wife "are citizens of California." Id.