IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DAWN BALL, Plaintiff,	:	DOCKET NO. 11-01,420
	:	CIVIL ACTION
vs.	:	
	:	PLRA
LT. SAVAGE, *et. al.* Defendants.	:	**APPEAL / 1925 (b)**

OPINION AND ORDER

Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)

This Court issues the following Opinion and Order pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) in response to Dawn Ball's appeal of this Court's Opinion and Order dated November 21, 2014 ("Opinion"). The Court revoked Ms. Ball's in forma pauperis (IFP) status pursuant to the Prison Litigation Reform Act, 42 Pa.C.S. §§ 6601-6608, specifically § 6602(f). The Court ordered the dismissal of Ms. Ball's complaint if the court fees and costs were not paid within 60 days after receipt of a statement of those fees from the Prothonotary pursuant to Lopez v. Haywood, 41 A.3d 184 (Pa. Cmwth 2012).[1] No testimony was taken in this matter.[2] This Court denied Ms. Ball's motion for reconsideration on December 15, 2014.[3] Most of the matters complained of on appeal have been addressed by this Court in its Opinion. This Court respectfully relies upon that Opinion and provides the following to further explain the reasons for the decision.

[1] The appeal was filed prior to dismissal of the matter. Ms. Ball filed an appeal prior to the expiration of the 60 days within which to pay the costs and fees. Also, the matter should have been appealed to the Commonwealth Court.
[2] No transcripts have been transcribed as to the oral argument held on August 29, 2014. With the filing of the notice of appeal, Ms. Ball indicated that she applied for IFP status with the Superior Court pursuant to Pa. R.A.P. 553. To date no deposit or Order granting IFP status has been provided to the Court Reporter. After revoking the IFP status, this Court did not stay the revocation pending appeal *sua sponte* because this Court believes that the Prison Litigation Reform Act, 42 Pa.C.S. §§ 6601-6608, is not intended to simply transfer prison litigation from the trial courts to the appellate courts unless the appellate court determines it to be appropriate in the specific case. The Court does not believe the transcripts are necessary for review as this matter which involved conclusions of law based upon facts presented in pleadings and motions which are available for review.
[3]The Order was filed December 17, 204.

For ease of reference, the Court has attempted to identify all of the matters raised by Ms. Ball and will address the eight matters identified in the order in which they first appear in Ms. Ball's Concise Statement.[4]

1. Timing of previously filed prison conditions litigation.

Ms. Ball claims that the Court could not revoke her IFP status under the "three strikes rule"[5] because "Plaintiff did not have 3 strikes at the initiation of this complaint." This Court disagrees. First, the Plaintiff did have at least three strikes at the initiation of the complaint on August 19, 2011. *See*, Ball v. Famiglio, 726 F.3d 448 (3rd Cir. 2013), *cert denied*, 134 S. Ct. 1547 (2014); *see also,* Defendants' Motion to Revoke IFP, setting forth four opinions to count as strikes, attached as A through D, which were all filed prior to August 19, 2011. Three of them were dismissed prior to the filing of the instant lawsuit on August 19, 2011. Moreover, all of them had been dismissed as frivolous or for other reasons under PLRA subsection (e)(2) at the time Ms. Ball reinstated her complaint on March 10, 2014. Those cases are as follows: Ball v. Counselor Hartman, et. al, 1: CV 09-0844 (filed in May 2009, dismissed on January 11, 2010), Ball v. C.O. Oden, et. al., 1: CV – 09-847 Ball v. Butts, 1:CV-11-1068 (filed on June 3, 2011, dismissed on June 14, 2011), Ball v. Butts, No. 11-2862 (3rd Cir. September 21, 2011)(appeal was required to be filed within 30 days of June 14, 2011, and was dismissed on September 21, 2011).

Second, and perhaps more importantly, the PLRA contains no requirement that the cases counted as "strikes" must have been filed and dismissed prior to the filing of the complaint in the matter in which IFP is revoked. The only timing requirement is that there have been previously

[4] Ms. Ball lists three paragraphs in her concise statement of errors made on appeal, but within those paragraphs the Court has identified about eight issues for review, some of which are listed more than once.

[5] The Commonwealth Court has referred 42 Pa. C.S. § 6602(f) (1) as the "three strikes rule." Bailey v. Baird, 943 A.2d 1007, 1009 (Pa. Cmwlth. 2008), *citing*, Brown v. James, 822 A.2d 128 (Pa. Cmwlth. 2003), *appeal denied*, 848 A.2d 930 (2004).

filed prison conditions litigation and that the litigation was dismissed prior to the revocation. While PLRA makes reference to "previously filed prison conditions litigation," the Court believes that it requires simply that the litigation was filed prior to the Court counting it as a strike against the prisoner, not that it have been filed prior to the filing of the complaint. In other words, the Court believes that once the prisoner incurs three strikes, PLRA subsection (f) authorizes revocation of the prisoner's IFP status for any pending prison conditions litigation unless the litigation involves a credible allegation of imminent harm.

2. This matter falls within the definition of prison conditions litigation.

Ms. Ball contends that this matter is not governed by PLRA because it does not involve prison conditions. As discussed in this Court's Opinion, the instant matter falls within the definition of prison conditions litigation. It is a civil proceeding arising with respect to the conditions of confinement or the effects of actions by governmental actors impacting the life of a person confined in prison. 42 Pa. C.S. § 6601. In the instant matter, the lawsuit concerns the conditions of confinement as to how Ms. Ball's property was kept, stored, lost and/or destroyed while she was an individual confined in prison. In addition, the lawsuit concerns actions by government parties, the Defendants, who handled Ms. Ball's property and made decision about her property, which affected the life of Ms. Ball while she was confined in prison.

3. Dismissals in Federal Court count for purposes of PLRA.

Ms. Ball contends that the Court erred in counting federal cases as "strikes" for purposes of dismissal under PLRA. This Court disagrees. The Commonwealth Court has recognized that federal cases count as "strikes" for purposes of PLRA. *See*, Corliss v. Varner, et. al., 934 A.2d 748, 751 (Pa. Cmwlth. 2007)("In addition, the court correctly noted that federal cases will count as strikes for purposes of Section 6602(f) of the PLRA.")(citations omitted). When considering

whether plaintiff has incurred three or more dismissals, PLRA does not require that any of the dismissed cases be in any particular jurisdiction.

4. Whether PLRA authorizes dismissal without a determination of whether the case is frivolous.

Ms. Ball contends that the instant matter is not frivolous and should not have been dismissed. The Court has not made a finding that the instant case is frivolous nor dismissed this case as frivolous or for other reasons under (e)(2). The PLRA does not require that a case be frivolous in order to revoke IFP status under subsection (f). 42 Pa. C.S. § 6602(f) authorizes the revocation of a prisoners IFP status for prison conditions litigation when the prisoner has previously filed prison conditions litigation and three or more have been dismissed for reasons stated in subsection (e)(2). The Court found that Ms. Ball had previously filed prison conditions litigation and three or more of those cases have been dismissed for reasons stated in subsection (e)(2). There was no allegation that the Ms. Ball was in imminent danger of serious bodily injury or that the present lawsuit related to such an allegation. Accordingly, the court applied 42 Pa. C.S. § 6602(f).

5. Whether the Court was required to dismiss the complaint under PLRA.

Ms. Ball contends that the Court was not mandated to dismiss the complaint under PLRA. The Court believes it was appropriate to revoke Ms. Ball's IFP status under the "three strikes" rule and dismiss the matter upon a failure to pay the filing fee within 60 days pursuant to 42 Pa. C.S. § 6602 (f). While the statute does not mandate that the Court act under the "three strikes" rule, the Court cannot ignore the statute. Ms. Ball has filed numerous prison conditions lawsuits that have been dismissed as frivolous or malicious, for failure to state a claim upon which relief may be granted, or because the defendant was immune from suit or could raise an affirmative defense barring relief. See, Ball v. Famiglio, 726 F.3d 448 (3rd Cir. 2013), *cert denied*, 134 S.

Ct. 1547 (2014)(By opinion dated August 9, 2013, the Third Circuit denied Ms. Ball IFP status because she had accrued three "strikes" under 28 U.S.C. § 1915(g)[6], the federal counter part of 42 Pa. C.S. § 6602(f)) [7] Ball v. Counselor Hartman, et. al, 1: CV 09-0844, Ball v. C.O. Oden, et. al., 1: CV – 09-847, Ball v. Butts, 1:CV-11-1068, Ball v. Butts, No. 11-2862 (3rd Cir. September 21, 2011).

In Jae v. Good, 946 A.2d 802 (Pa. Cmwlth. 2008), the Commonwealth Court explained that Pennsylvania's "three strikes rule" advances a legitimate governmental interest in deterring frivolous lawsuits by depriving an abusive litigator of the ability to proceed IFP. Lopez v. Haywood, 41 A.3d 184 (Pa. Commw. 2012), *citing*, Jae, 946 A.2d at 809. In Ball v. Famiglio, the Third Circuit explained the background for enactment of the federal analog of Pennsylvania's PLRA as follows.

> Congress recognized, however, that "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." Id. (internal quotation marks omitted). And indeed, despite efforts to curtail the opportunity for abusive filings that free court access can provide, "[p]risoner litigation continues to account for an outsized share of filings in federal district courts." Jones v. Bock, 549 U.S. 199, 203, 127 S. Ct. 910, 166 L. Ed. 2d 798 (2007) (internal quotation marks omitted). In 1996, in response to the tide of "substantively meritless prisoner claims that have swamped the federal courts," Shane v. Fauver, 213 F.3d 113, 117 (3d Cir. 2000) (original emphasis omitted), Congress enacted the PLRA to "filter out the bad claims and facilitate consideration of the good," Bock, 549 U.S. at 204. Ball v. Famiglio, 726 F.3d 448, 452 (3d Cir. 2013)

[6] 28 USCS § 1915 (g) provides as follows: "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." It is important to note that Pennsylvania's "three strikes rule" counts as strikes cases that are not counted under its federal counterpart. For instance, Pennsylvania's PLRA counts cases that were dismissed because "defendant is entitled to assert a valid affirmative defense, including immunity, which, if asserted, would preclude the relief." 42 Pa.C.S. § 6602(e)(2) and (f).

With respect to the very Plaintiff in the instant matter, the Third Circuit described Ms. Ball's extensive history of litigation in the federal courts and stated that she filed many lawsuits that "followed the same basic pattern as *SCI Muncy*, *Hartman* and *Butts*." Ball v. Famiglio, 726 F.3d at 454. In Ball v. Famiglio, the Third Circuit recognized that Ms. Ball's litigation in that case, against about "twenty-eight correction officers, medical personnel and contract health providers, employed or providing services at SCI-Muncy," was "part of a larger pattern of repeated and entirely unsuccessful litigation brought by Ball in the United States District Court for the Middle District of Pennsylvania." Ball v. Famiglio, 726 F.3d at 453, 455. The Third Circuit calculated that Ms. Ball had accumulated more than twenty-five dismissals of actions and appeals by the District Court and the Third Circuit. Ball v. Famiglio, 726 F.3d at 455. Ms. Ball had more than thirty actions to her name in federal court as of August 9, 2013, the date of the opinion. Ball v. Famiglio, 726 F.3d at 454. Of the 30 cases, all but five had been dismissed, and those five remaining cases were pending. Id. The Third Circuit further noted that Ms. Ball had 22 appeals before the Third Circuit in addition to a few appeals that the Third Circuit did not include in the tally. Id.

Without determining the merits of the present litigation, the Court has concerns about the potential for abusive filings within the case itself. In the present matter, Ms. Ball has taken litigious steps that do not appear on their face to have any merit. As but one example, Ms. Ball erroneously obtained default judgments against Defendants even though no Defendant had been served. Defendants filed appropriate motions and briefs. When the default judgments were stricken, Ms. Ball filed a motion for reconsideration. In addition, there may be no arguable basis in fact as to the amount of damages demanded for the lost or destroyed property ($18,000 plus the costs of suit). The items listed included mostly personal hygiene, make-up, clothes, and

reading/writing materials. See, Opinion, at 3, n. 4. The property had been stored within the confines of Ms. Ball's prison cell and had been packed in 3 to 5 boxes. In light of Ms. Ball's pro se litigation history, coupled with the type of filings in the present suit, the Court believes it was appropriate to revoke Ms. Ball's IFP status pursuant to Section 6602(f) of the PLRA.

6. Ms. Ball is not entitled to a default judgment against Maurica George.

The Court believes it fully explained the reasons for striking the default judgment against Maurica George in its Opinion.

7. Ms. Ball is not entitled to a default judgment or judgment on the pleadings againstLt. Savage.

The Court addressed the default judgment sought against Lt. Savage in §2 of its Opinion. The Court believes that neither a default judgment nor a judgment on the pleadings is available to the Plaintiff for the reasons stated in its Opinion.

For these reasons, and those stated in this Court's opinion dated November 21, 2014, this Court respectfully requests that its judgment be affirmed.

BY THE COURT,

March 18, 2015
Date

Richard A. Gray, J.

cc: **Dawn Ball, OL-0342**
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