

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DAWN BALL,	:	DOCKET NO. 14-02,018
	:	1619 MDA 2015
Plaintiff,	:	CIVIL ACTION/PLRA
	:	
vs.	:	RELATED CASES:
	:	84 MDA 2015
LT. CRAVER and SERGEANT HILL.	:	1464 MDA 2015
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). Dawn Ball appealed this Court's Order entered August 25, 2015 dismissing her complaint for failure to pay filing fees and costs after her in forma pauperis (IFP) status was revoke pursuant to the Pennsylvania Prison Litigation Reform Act (PRLA), 42 Pa. C.S. § 6602(f). The reasons for this Court's decision to revoke Ms. Ball's IFP are stated in its Orders dated February 6, 2015 and May 27, 2015. The Court respectfully relies upon those Orders and the following opinion in support of affirmance of its decision.

The procedural background of this case is as follows. In her complaint filed on August 5, 2014, Plaintiff, an inmate at SCI-Muncy, alleged that Lt. Craver assaulted her in her cell while Sgt. Hill acquiesced, causing her severe and permanent injuries, pain and suffering. Ms. Ball sought compensatory and punitive damages. Specifically she requested a judgment in the sum of \$50,000, plus costs and fees and future medical and psychological expenses. Ms. Ball did not request or seek injunctive relief. On January 12, 2015, Ms. Ball reinstated her complaint. On January 13, 2015, the Sheriff served the Defendants. On February 2, 2015, the Defendants' filed a motion to revoke Ms. Ball's IFP status and dismiss the complaint pursuant to the PLRA.

On February 6, 2015 the Court granted the Defendants' petition and revoked Plaintiff's IFP status pursuant to 42 Pa. C.S. § 6602(f). As instructed by Lopez v. Haywood, 41 A.3d 184 (Pa. Cmwh 2012), the Court directed the Prothonotary to submit an invoice to Ms. Ball for fees and costs and provided Ms. Ball with 60 days to pay them or suffer dismissal of her complaint. On February 17, 2015, the Prothonotary mailed an invoice to Ms. Ball for fees and costs in the total amount due of \$ 202.95. On February 19, 2015, Ms. Ball petitioned the Court for a stay/extension in part because she was ordered to go to Torrance State Hospital for at least 60 days or longer and needed 90 days to answer the motion to revoke her IFP status. The Court treated the petition as a motion for reconsideration. By Order dated February 19, 2015, the Court granted reconsideration and stayed the matter until May 18, 2015 to consider any further submissions by Ms. Ball. On May 8, 2015, Ms. Ball submitted further opposition and a supporting brief.

On May 27, 2015, the Court entered an Order denying Plaintiff's request for reconsideration and granting the Defendants' petition to revoke Plaintiff's IFP status. That Order directed the Prothonotary to resubmit an invoice to Ms. Ball. The Court provided Ms. Ball with another 60 days to pay fees and costs or suffer dismissal. On June 1, 2015, an invoice was mailed by the Prothonotary to Ms. Ball. On August 25, 2015, the fees and costs remained unpaid and the Court dismissed the matter. On September 21, 2015, Ms. Ball filed her notice of appeal. On September 24, 2015, Ms. Ball was directed to file her concise statement. On October 8, 2015, Ms. Ball certified that she mailed her concise statement to the Prothonotary, Judge and opposing Counsel.

In her concise statement, Ms. Ball complains of the following matters on appeal.

1. Plaintiff[']s opposition to defendants['] motion and Judge's ruling on revocation of her informia paupers status should be granted.

2. [T]his is not a frivolous case and defendants deliberately with malicious intent assaulted her and acquiesced to the assault, and [are] not entitled to immunity.
 3. [T]he court does not have to dismiss for alleged 3 strikes in a federal court. It[']s not mandatory.
 4. [T]his is the only recourse the plaintiff has as a remedy. Prison grievances are ignored.
 5. [T]his is an ongoing problem with staff at this prison and she is under imm[in]ent danger.
 6. [T]his complaint does state a claim.
 7. [T]he defendants acted outside the scope of their duties.
 8. Plaintiff never has [had] a frivolous case in state court.
-

As to the first and third matters raised, the Court concluded that it was appropriate to revoke Ms. Ball's IFP status pursuant to Section 6602(f) of the PLRA in this case. Ms. Ball has an extensive litigation history indicative of abuse. The record establishes that Ms. Ball has accrued three "strikes" in federal court. In Ball v. Famiglio, 726 F.3d 448 (3rd Cir. 2013), *cert denied*, 134 S. Ct. 1547 (2014), the Third Circuit denied Ms. Ball IFP status because Ball accrued three "strikes" under 28 U.S.C. § 1915(g), the federal counter-part to PLRA. The Third Circuit described Ms. Ball as engaging in a pattern of "repeated and entirely unsuccessful" litigation against correction officers and others employed or "providing services at SCI-Muncy[.]" Ball v. Famiglio, 726 F.3d at 455. Defendants attached four federal court opinions dismissing litigation filed by Ms. Ball for reasons set forth in 42 Pa. C.S. § 6602(e). As Ms. Ball has accrued three strikes for purposes of PLRA and the present case fits the pattern described by the Third Circuit, this Court respectfully submits it was appropriate to revoke Ms. Ball's IFP status.

As to the eighth issue raised, 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).

As to the second, fourth, sixth and seventh issues raised, the Court notes that the PLRA does not require that a case be frivolous, that the prisoner have an alternate remedy, or that the defendants be immune to suit in order to revoke IFP status. 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).

As to the fifth issue, while the PLRA provides an exception, the exception has not been met in the present case. 42 Pa. C.S. § 6602(f) provides one exception to revocation: “[t]he court shall not, however, dismiss a request for preliminary injunctive relief or a temporary restraining order which makes a credible allegation that the prisoner is in imminent danger of serious bodily injury.” The court does not believe the complaint, taken as a whole, presents a credible threat of imminent danger of serious bodily injury. There is a reference to continual psychological trauma and vague threats of harm, but, the vast majority of the complaint involves allegations arising from an assault and harm resulting from that incident. Most importantly, the exception was not met in the present case because Ms. Ball did not request injunctive relief but instead sought a money judgment for injuries resulting from an assault.

For these reasons and those stated in this Court's Orders dated February 6, 2015 and May 27, 2015, this Court respectfully requests that its judgment be affirmed.

BY THE COURT,

November 18, 2015

Date

Richard A. Gray, J.

cc: **Dawn Ball, OL-0342**
SCI-Muncy
BOX 180, Route 405
Muncy, PA 17756-0180

**Julie Renee Tilghman, Esq. &
Raymond W. Dorian, Esq.**
Pa. Dept. of Corrections
Office of Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050

(Superior & 1) & (Commonwealth & 1)