

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DAWN BALL,	:	DOCKET NO. 15-01259
	:	1784 MDA 2015
Plaintiff,	:	CIVIL ACTION/PLRA
	:	
vs.	:	RELATED CASES:
	:	1619 MDA 2015
LT. BECKLEY.	:	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, an inmate at SCI-Muncy, appealed this Court's Order entered September 24, 2015 that dismissed her complaint for failure to pay filing fees and costs. The Court revoked Ms. Ball's in forma pauperis (IFP) status on May 27, 2015 pursuant to the Pennsylvania Prison Litigation Reform Act (PLRA), 42 Pa. C.S. § 6602(f).¹ The reasons for revoking Ms. Ball's IFP are stated in its Order dated May 27, 2015. The Court respectfully relies upon the reasons stated in that Order and the following opinion in support of its decision.

The procedural background of this case is as follows. On May 8, 2015, Ms. Ball filed a complaint and petition/motion for preliminary injunction, petition to proceed without payment of costs, motion to serve without payment of costs and motion to waive bond. On the Lycoming County coversheet accompanying the motions, Ms. Ball requested expedited consideration to prevent further abuse, threats, harassment, provocation and "antagonizment" and noted that the Plaintiff was "scared for her life (imminent danger)." Pursuant to Pa. R.C.P. 1531(a), an ex parte

¹ The Court took judicial notice of court documents filed in other proceedings involving Ms. Ball and SCI-Muncy Ball in Lycoming County which established that that Ms. Ball accrued three or more "strikes" under PLRA. (See, 1619 MDA 2015; 1464 MDA 2015) See, also, e.g., *Ball v. Famiglio*, 726 F.3d 448 (3rd Cir. 2013), *cert denied*, 134 S. Ct. 1547 (2014); 28 U.S.C. § 1915(g), the federal counter-part to PLRA.

hearing was held on May 27, 2015 on Ms. Ball's motion for preliminary injunction. Ms. Ball appeared pro se by video conferencing from SCI-Muncy. Following testimony, the Court found that Ms. Ball had not presented a credible allegation that she was in imminent danger of serious bodily injury.

In light of Ms. Ball's litigation history and the failure to present a credible threat of imminent bodily injury, the Court revoked Ms. Ball's IFP status pursuant to 42 Pa. C.S. § 6602(f). Under the directive of Lopez v. Haywood, 41 A.3d 184, (Pa. Cmwlth. 2012), the Court directed the Prothonotary to submit an invoice to Ms. Ball for the fees and costs that would have been required had she not been IFP. On June 1, 2015, an invoice was mailed by the Prothonotary to Ms. Ball for filing fees in the amount of \$134.50. On June 5, 2015, Ms. Ball filed a motion for reconsideration, which was denied on June 9, 2015. On September 24, 2015, the fees and costs remained unpaid and the Court dismissed the matter. On October 13, 2015, Ms. Ball filed her notice of appeal. On November 9, 2015, Ms. Ball filed her concise statement of errors made on appeal.

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

1. Plaintiff put forth an injunction which does not fall under the prison litigation reform act and this court erred in revoking Plaintiff's in forma pauperis and making her pay fees to pursue this.
 2. Plaintiff has tried to put forth prison grievances on the defendant and his action and refusing plaintiff her medical appointments and care to no avail. Plaintiff's grievances are either refused, denied or the prison flat out refuses to process the Plaintiff's grievances all together.
 3. This is the only recourse for remedy the Plaintiff has. Everything else has failed and plaintiff's life and health are in danger.
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The Court will address the matters raised by Ms. Ball in the order she presented them.

The first matter raised is whether the Court erred because a request for injunction falls outside

the PLRA. 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). However, 42 Pa. C.S. § 6602(f) further provides: “[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.” Not all injunctions fall within this exception. The injunction must include a *credible allegation* that the prisoner is in imminent danger of serious bodily injury.²

In the present case, after taking and weighing Ms. Ball’s testimony, the Court found that Ms. Ball did not make a credible allegation that Ms. Ball was in imminent danger of serious bodily injury.³ Most of Ms. Ball’s testimony concerned her allegation that Lt. Beckly has a vendetta against her and that he goes out of his way to make her life hard and difficult. Ms. Ball testified that Lt. Beckly stole her legal planner, put Ms. Ball in a cell with broken fixtures, called her names, made fun of her to other inmates, and embarrassed her. Ms. Ball testified that Lt. Beckly used pepper spray / mace on her for no reason, causing a physical reaction and aggravating her asthma. Ms. Ball also testified that Lt. Beckly denied her access to medical services that she requested. Ms. Ball did not testify that she sustained bodily injuries that

² The PLRA does not define imminent danger of serious bodily injury. The PLRA does not define bodily injury. The Crimes Code defines serious bodily injury as “[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” 18 Pa.C.S. § 2301. The Motor Vehicle Financial Responsibility Law, 75 Pa.C.S. § 1702, defines serious injury as “[a] personal injury resulting in death, serious impairment of body function or permanent serious disfigurement.” 75 Pa.C.S. § 1702. “In defining the term ‘imminent danger,’ our Supreme Court has stated, ‘[t]o be imminent, the danger must be, or must reasonably appear to be, threatening to occur immediately, near at hand, and impending.’” Brown v. Beard, 11 A.3d 578 (Pa. Cmwlth. 2010), *quoting*, Com. v. Capitolo, 508 Pa. 372, 379, 498 A.2d 806, 809 (1985).

³ No transcript has been made as to the ex parte hearing conducted on May 27, 2015, as Ms. Ball was granted IFP on appeal solely as to filing fees and no deposit for transcripts was made.

required significant medical treatment.⁴ There was no medical documentation attached to the complaint. This Court found that Ms. Ball's testimony did not constitute a credible allegation that Ms. Ball is in imminent danger of serious bodily injury at SCI-Muncy from Lt. Beckly. Accordingly, even though Ms. Ball requested an injunction, the Court concluded that it was appropriate to revoke Ms. Ball's IFP status pursuant to Section 6602(f) of the PLRA in light of her extensive litigation history indicative of abuse and the lack of a credible threat of imminent bodily injury.

The Court views the second and third matters raised by Ms. Ball as substantially the same. Ms. Ball contends that the revocation of her IFP status pursuant to Section 6602(f) of the PLRA is an error because Ms. Ball has no other recourse or remedy. The lack of a remedy, however, does not preclude application of Section 6602(f) unless the grievance is a credible threat of imminent bodily injury. Section 6602(f) of the PLRA authorizes the revocation of IFP status without regard to whether the prisoner has an adequate remedy at law for the grievance at issue, unless the prisoner makes a credible allegation that the prisoner is in imminent danger of serious bodily injury. The Commonwealth Court has recognized that "the consequences of the "three strikes rule" deprive the prisoner of the ability to pursue his claim in forma pauperis." Jae v. Good, 946 A.2d 802, 809 (Pa. Cmwlth. 2008). The prisoner could continue with the litigation by paying costs. Id. When determining that the revocation of IFP is appealable, our Pennsylvania Supreme Court has recognized that the denial of IFP status essentially leaves an inmate with no remedy. Grant v. Blaine, 582 Pa. 1 (Pa. 2005). The plain reading of the PLRA suggests the statute contemplates the lack of a remedy for a prisoner with an abusive litigation history except as to a credible threat of imminent bodily injury. Indeed, if a lack of a remedy precluded revocation under PLRA, it would render the provision completely ineffective.

⁴ The Court's description of the testimony arises from memory and notetaking.

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

BY THE COURT,

December 14, 2015

Date

Richard A. Gray, J.

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