

United States Court of Appeals
For the Eighth Circuit

No. 14-1481

Robert George

Plaintiff - Appellant

v.

Officer Jason Tucker

Defendant - Appellee

Appeal from United States District Court
for the Western District of Missouri - Springfield

Submitted: August 28, 2014

Filed: September 2, 2014

[Unpublished]

Before MURPHY, BYE, and GRUENDER, Circuit Judges.

PER CURIAM.

Robert George, Jr. appeals the district court's dismissal without prejudice of his complaint for failure to pay an initial partial filing fee. After careful review, we hold the district court abused its discretion by dismissing the case without first taking steps to determine whether George's failure to pay was caused by circumstances beyond his control, such as prison officials' failure to adhere to his request to remit

payment using funds from his account. *See Wilson v. Sargent*, 313 F.3d 1315, 1316-17, 1320-21 (11th Cir. 2002) (per curiam) (district court abused its discretion by dismissing complaint, for failure to pay initial partial filing fee, without first taking reasonable steps to determine whether prisoner tried to pay fee by authorizing prison officials to make payment from his inmate account); *Hatchet v. Nettles*, 201 F.3d 651, 652, 654 (5th Cir. 2000) (per curiam) (same; reasonable steps may include issuing show-cause order). Notably, George had submitted to the district court, as part of his in forma pauperis motion, a signed form authorizing the prison to withdraw funds from his account and forward payments to the clerk of court. *See Wilson*, 313 F.3d at 1321 (if prisoner authorized officials to make payment, case ordinarily should not be dismissed). Additionally, we note that the initial partial filing fee was likely miscalculated, as the court counted as “deposits” three credits (for \$150.11, \$13.86, and \$163.97) to George’s account, which appear to be merely adjustments for erroneous debits from his account.

Accordingly, George’s motion to appeal in forma pauperis is granted, and the dismissal of his complaint is reversed. On remand, the district court is instructed to (1) re-calculate the initial partial filing fee under 28 U.S.C. § 1915(b)(1), and (2) order George to show cause why the fee has not been paid, or take other reasonable steps to determine whether he tried to comply with the court’s fee-payment order.