

United States Court of Appeals
For the Eighth Circuit

No. 14-2915

Robin M. Sims

Plaintiff - Appellant

v.

Joshua Davis, Detective; Kansas City Missouri Police Department

Defendants - Appellees

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

Submitted: January 5, 2015

Filed: January 14, 2015

[Unpublished]

Before LOKEN, SMITH, and BENTON, Circuit Judges.

PER CURIAM.

Kansas inmate Robert M. Sims appeals the district court's dismissal of his complaint, without prejudice, for failure to timely pay an initial partial filing fee. Prior to dismissal, Sims submitted to the district court, as the court had directed, a signed form authorizing the agency having custody of his prison account to withdraw funds and forward payment to the Clerk of Court, "in accord with 28 U.S.C. § 1915."

As the district court's dismissal order did not acknowledge this authorization, we conclude the court abused its discretion by dismissing the case without first determining whether Sims's failure to pay by the court's deadline was caused by prison officials' failure to adhere to his request to remit payment using funds from his account, which would excuse his failure to pay within the time ordered by the court, or by Sims's failure to leave sufficient funds in the account to timely pay the initial filing fee, which would not. *See George v. Tucker*, 570 Fed. Appx. 629 (8th Cir. 2014).

Sims'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 order Sims 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.
