

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lamont Henderson,	:	
Appellant	:	
	:	
v.	:	No. 1971 C.D. 2007
	:	SUBMITTED: June 6, 2008
M. Bogusky and D. Jones	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: July 29, 2008

The Court of Common Pleas of Luzerne County (common pleas) granted Defendants' motion to dismiss Lamont Henderson's complaint for failure to comply with a court order. The issue on appeal is whether the trial court properly dismissed Henderson's complaint when he failed to fully comply with the court's order revoking his in forma pauperis status and directing the payment of the filing fee and costs.

Henderson, an inmate who is confined at the State Correctional Institution in Dallas (SCI-Dallas), filed a complaint in the court of common pleas against a correctional officer, M. Bogusky, and a hearing examiner, D. Jones (Defendants), alleging discrimination and retaliation in the denial of a prison work assignment at SCI-Dallas. Once Henderson filed the proper petition and

supporting affidavit pursuant to Pa. R.C.P. No. 240(c),¹ the court initially granted Henderson leave to proceed in forma pauperis. Defendants filed a motion to revoke his in forma pauperis status pursuant to 42 Pa. C.S. § 6603 and 28 U.S.C. § 1915(g).² After a hearing, the trial court entered an order dated December 10, 2004, granting the motion based upon Henderson's having filed three prior actions that were dismissed as frivolous or for failure to state a claim. The order directed Henderson to pay the full amount of filing fees and costs incurred within 60 days, and stayed all proceedings pending either the payment of the fees and costs or the dismissal of the action. Henderson did not comply with this order.

On April 10, 2005, Henderson filed a praecipe for entry of default judgment, but the court refused to take action based on Henderson's failure to pay the filing fee and costs. Henderson paid the filing fee on May 2, 2005; the costs remained unpaid.

On January 9, 2006, Henderson filed a second praecipe for default judgment, and the Prothonotary entered default judgment against Defendants. On June 11, 2007, Defendants moved to strike the default judgment as void in light of the December, 2004, stay and Henderson's failure to comply fully with the trial

¹ In civil actions, a party who is without financial resources who wishes to proceed without paying the costs of litigation must file a petition for leave to proceed in forma pauperis with a supporting affidavit that substantially conforms to the form provided in Pa. R.C.P. No. 240(h). Pa. R.C.P. No. 240(c).

² 42 Pa. C.S. § 6603, part of Pennsylvania's Prison Litigation Reform Act, provides in pertinent part that prison conditions litigation filed in a court of the Commonwealth alleging a violation of Federal law shall be subject to any limitation on remedies established by Federal law or Federal courts with respect to Federal claims. Averting that Henderson's civil action arises under Federal law, at least in part, Defendants invoked the "three strikes" provision of the Federal Prison Litigation Reform Act, 28 U.S.C. § 1915(g), which, they averred, denies an inmate the right to obtain in forma pauperis status after the inmate has had three or more civil actions dismissed as frivolous, malicious, or failing to state a claim.

court's order. At oral argument on Defendants' motion, held on July 9, 2007, Henderson admitted that he did not pay the service costs, and the default judgment was stricken.

On October 1, 2007, Defendants filed the motion to dismiss complaint, with an affidavit indicating that Henderson still had not paid \$67.00 in service costs. By order dated October 2, 2007, the court granted Defendants' motion and dismissed the complaint for Henderson's failure to comply with the December 10, 2004, order. The trial court directed Henderson to file a concise statement of matters complained of on appeal.

The record does not include a statement of matters complained of on appeal, and the docket entries do not reflect that one was filed. However, Defendants' brief in response to plaintiff's concise statement of matters complained of on appeal reflects that Henderson raised three issues: whether the prothonotary failed to note the timely payment of the filing fee, whether his failure to pay the service costs timely was excusable negligence where the Prothonotary failed to provide him information regarding the amount of fees owed, and whether the trial court abused its discretion in failing to provide him with time to respond to Defendant's motion to dismiss before granting the motion and dismissing the complaint. The record contains no Pa. R.A.P. 1925(a) opinion. Notably, Henderson does not challenge the trial court's revocation of his in forma pauperis status.

First, Henderson argues that the trial court committed fraud in failing to docket his payment of the \$93.00 filing fee and purposely misdating the

payment date.³ Because this matter is an appeal of the trial court's dismissal of his complaint for failure to comply with its order directing the payment of service costs, Henderson's allegation and argument on this issue have no bearing on the order in question. The trial court acknowledged Henderson's payment of the filing fee in partial compliance with its order, and any alleged discrepancy in the payment date is irrelevant in deciding whether the court properly dismissed the complaint.

Next, Henderson argues that his failure to pay the service costs in a timely manner was excusable negligence because the Prothonotary failed to provide him information regarding the amount of fees owed, and that the trial court abused its discretion when it granted Defendants' motion to dismiss without waiting for him to respond. The record reflects that as of July 9, 2007, when the parties appeared in court on Defendants' motion to strike default judgment, Henderson admitted that he had not yet paid the service costs as directed in the trial court's December 10, 2004, order. The costs remained unpaid as of October 1, 2007, when Defendants moved for dismissal.

A court has inherent power to enforce its own orders, and an appellate court will not interfere with the enforcement absent an abuse of discretion. *Commonwealth v. Shaffer*, 551 Pa. 622, 712 A.2d 749 (1998). A court need not overlook a party's failure to comply with its order or accept payment of costs tendered well beyond the court-ordered deadline. *See Konya v. District Attorney*, 543 Pa. 32, 669 A.2d 890 (1995). Henderson had ample opportunity to comply

³ The record indicates that Henderson paid the filing fee on May 2, 2005. Henderson argues that his wife sent a money order for the filing fee to the court on February 2, 2005, and that the court cashed/deposited the money order of February 25, 2005. (Henderson Brief, p. 12.)

with the trial judge's order directing that he pay the service costs, and he had ample notice that Defendants were seeking dismissal of his complaint based on his failure to comply. The record reveals no extraordinary circumstances that would justify Henderson's failure to comply with the trial court's order, and the court was well within its discretion to enforce its order without affording Henderson yet another opportunity to comply. *See Shaffer*.

Accordingly, the order of the Court of Common Pleas of Luzerne County is affirmed.

BONNIE BRIGANCE LEADBETTER,
President Judge

