

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-2666

Franklin Hiestand,

Appellant,

v.

United States of America,

Appellee.

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Appeal from the United States
District Court for the Eastern
District of Missouri.

[UNPUBLISHED]

Submitted: November 30, 2004

Filed: December 9, 2004

Before MORRIS SHEPPARD ARNOLD, MURPHY, and SMITH, Circuit Judges.

PER CURIAM.

Missouri inmate Franklin Hiestand appeals the dismissal without prejudice of his 42 U.S.C. § 1983 action for nonpayment of the filing fee, after the district court determined he was ineligible under 28 U.S.C. § 1915(g) to bring his action in forma pauperis (IFP). Hiestand also moves for leave to proceed IFP on appeal. Because we find he had not yet accumulated “three strikes” when the district court ruled, we grant Hiestand leave to appeal IFP, assess the filing fee according to the provisions of the Prison Litigation Reform Act, and leave the collection details to the district court.

We also find that Hiestand's section 1983 action was subject to dismissal, but on the ground that the complaint was frivolous. See Neitzke v. Williams, 490 U.S. 319, 325 (1989) (defining frivolous); Saulsberry v. St. Mary's Univ. of Minn., 318 F.3d 862, 866 (8th Cir. 2003) (appellate court may affirm district court's order on any basis supported by record). Counting this dismissal, Hiestand now has three strikes and will be barred from proceeding IFP in future actions or appeals, unless he meets the imminent-danger exception noted in section 1915(g).

Accordingly, we affirm. See 8th Cir. R. 47A(a).
