

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GLENN HAYES,)
)
)
Plaintiff,) No. 4:15-CV-653 RLW
)
v.)
)
FEDERAL RESERVE BANK OF ST. LOUIS,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the court on Defendant Federal Reserve Bank of St. Louis’s Motion to Dismiss Plaintiff’s Complaint Pursuant to 28 U.S.C. §1915(e)(2) (ECF No. 10), Defendant’s Motion to Strike Plaintiff’s Sur-Reply (ECF No. 20), and Plaintiff’s Counter Motion to Strike Defendant’s Sur-Reply (ECF No. 21). These matters are fully briefed and ready for disposition.

DISCUSSION

Defendant asks this Court to dismiss Plaintiff’s Complaint pursuant to 28 U.S.C. §1915(e)(2), which provides “[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the allegation of poverty is untrue.” Defendant contends that Plaintiff misrepresented his financial status in two respects. First, Defendant asserts that Plaintiff received \$3,268.75 (gross) each month since August 2008 in retirement benefits, but Plaintiff claimed in his Financial Affidavit that he received only \$2,895. (ECF No. 2, 11). Second, Defendant maintains that Plaintiff failed to disclose on his Financial Affidavit that he owns any real property. (ECF No. 2). However, St. Louis County Department of Revenue records show that Plaintiff owns a residence at 11311 Dunn View Drive, St. Louis, Missouri, 63138 that appraised for \$172,600 in 2014 for real estate

tax purposes. (ECF No. 11 at 2). Defendant argues that the Court should dismiss Plaintiff's Complaint because his allegations of poverty are untrue. (ECF No. 11 (citing *Staten v. Tekelec*, No. 5:09-CV-434-FL, 2011 WL 2358221, at *2 (E.D.N.C. June 9, 2011) ("Nothing in § 1915 permits an applicant, even one who genuinely is unable to afford to pay the filing fee, to pick and choose what financial information to include on the *in forma pauperis* application.")); *Romesburg v. Trickey*, 908 F.2d 258, 260 (8th Cir. 1990) ("district court has the discretion to dismiss a case with prejudice where a plaintiff has in bad faith filed a false affidavit of poverty").

In response, Plaintiff maintains that his Financial Affidavit lists his net income of \$2,895, rather than his gross income which Defendants provided. (ECF No. 16). Plaintiff further explains that he did not list his residence because he believed that he was only required to provide information regarding real estate that generated income. (ECF No. 16). Plaintiff notes that he provided his home address to the Court and "in no way" attempted to conceal his real estate ownership.

The Court holds that Defendant has not demonstrated that Plaintiff has acted in bad faith sufficient to require a dismissal of his Complaint. *See Romesburg*, 908 F.2d at 260. Plaintiff provides plausible explanations for the misleading and incomplete information in his Financial Affidavit. Therefore, the Court denies Defendant's Motion to Dismiss and permits Plaintiff to re-submit his Financial Affidavit to allow the Court to consider whether he is eligible for In Forma Pauperis status.

Accordingly,

IT IS HEREBY ORDERED that Defendant Federal Reserve Bank of St. Louis's Motion to Dismiss Plaintiff's Complaint Pursuant to 28 U.S.C. §1915(e)(2) (ECF No. 10) is **DENIED**.

IT IS FURTHER ORDERED that the Clerk shall mail to plaintiff a form "Motion to Proceed In Forma Pauperis and CJA-23 Financial Affidavit."

IT IS FURTHER ORDERED that plaintiff shall have thirty (30) days from the date of this Order to pay the statutory filing fee of \$400, or to submit a completed form "Motion to Proceed In Forma Pauperis and Financial Affidavit."

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Order, the Court may dismiss this action without prejudice.

IT IS FINALLY ORDERED that Defendant's Motion to Strike Plaintiff's Sur-Reply (ECF No. 20) and Plaintiff's Counter Motion to Strike Defendant's Sur-Reply (ECF No. 21) are **DENIED**.

Dated this 8th day of October, 2015.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE