

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 0647

WILBERT ROGERS II

VERSUS

RICHARD STALDER, SECRETARY, DEPARTMENT OF CORRECTIONS,
LYNN COOPER, WARDEN, AVOYELLES CORRECTIONAL CENTER AND
RUSSELL LACHNEY, CLASSIFICATIONS OFFICER, AVOYELLES
CORRECTIONAL CENTER

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Judgment Rendered: February 14, 2007

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State Of Louisiana
Suit Number 521,518

Judge Kay Bates, Presiding

* * * * *

Wilbert R. Rogers, II
Cottonport, LA

Plaintiff/Appellant
In Proper Person

Charles C. Foti, Jr.
Tunde M. Anima-Shaun
Baton Rouge, LA

Counsel for Defendants/Appellees
Richard Stalder, Lynn Cooper, and
Russell Lachney

* * * * *

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

GUIDRY, J.

In this appeal, a prisoner seeks review of the district court's judgment assessing court costs against him upon the dismissal of his petition for judicial review. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Plaintiff is an inmate in the custody of the Louisiana Department of Public Safety and Corrections ("Department"), confined in the Avoyelles Correctional Center. Plaintiff filed a request for administrative remedy, alleging he was denied the privilege of enrolling in vocational technical ("vo-tech") classes and denied his request to lift weights for strengthening/maintaining his upper body. The first and second step responses from the Department denied his requests. Thereafter, plaintiff filed a petition for judicial review and an accompanying motion to proceed *in forma pauperis* in the district court. The district court granted plaintiff's motion, and upon review the Commissioner issued a stay order and remanded the matter to the first step level for re-consideration. Following the Department's compliance with this order, the Commissioner issued his recommendation. In his recommendation, the Commissioner found that the Department's decision, denying plaintiff's enrollment in vo-tech classes and denying his request to lift weights, was not arbitrary, capricious, or in violation of any of plaintiff's rights and recommended that the Department's decision be affirmed and the appeal be dismissed at plaintiff's cost. Plaintiff subsequently filed a motion to traverse the Commissioner's recommendation. Following its *de novo* consideration of the entire record, the district court rendered judgment affirming the Department's decision and dismissing plaintiff's suit with prejudice at his cost. Plaintiff now appeals from this judgment, asserting that the district court's assessment of court costs against him violates his fundamental right to due process.

DISCUSSION

Due process under the state and federal constitutions requires, as a minimum, and in the absence of a countervailing state interest of overriding significance, that persons forced to settle their claims through the judicial process must be given a meaningful opportunity to be heard. See La. Const. Art. I, § 22; see also Boddie v. Connecticut, 401 U.S. 371, 377, 91 S. Ct. 780, 785-787, 28 L. Ed. 2d 113 (1971), and cases cited therein. As such, it is an unjustifiable denial of due process to deny an indigent plaintiff access to the courts on the ground of nonpayment of a fee. Boddie, 401 U.S. at 380-381, 91 S. Ct. at 787; Bolden v. City of Shreveport, 278 So. 2d 138, 141 (La. App. 2nd Cir. 1973).

The Louisiana legislature, cognizant of this right, has provided certain safeguards to ensure that an individual's right to due process is not abridged by the imposition of court costs and fees. See La. C.C.P. arts. 5181-5188; see also Johnson v. First National Bank of Shreveport, 00-2496, 00-2487, 002498, p. 9 (La. 5/15/01), 786 So. 2d 84, 90. Specifically, La. C.C.P. art. 5181(A) provides, in part, that "an individual who is unable to pay the costs of court because of his poverty and lack of means may prosecute or defend a judicial proceeding in any trial or appellate court without paying the costs in advance or as they accrue or furnishing security therefore." The grant of the privilege to litigate without prepayment of costs is designed to assure that no individual is deprived of his day in court merely because of his lack of financial means to pay or secure court costs. Benjamin v. National Super-Markets, Inc., 351 So. 2d 138, 141 (La. 1977).

It is to be borne in mind, however, that the grant of the privilege to litigate *in forma pauperis* is founded upon the view that in effect, the governmental bodies are merely furnishing without prepayment of cost its resources to the financially embarrassed litigant, in order to prevent his losing his day in court merely because of the financial expense to the government of entertaining his claim. Benjamin,

351 So. 2d at 141. Of course, the litigant remains liable for the costs in the event judgment is rendered against him, despite the granting of the privilege allowing him to proceed without their prepayment or bonding. See La. C.C.P. art. 5186-5188.¹

Based on the foregoing, we find that the district court's imposition of court costs against plaintiff did not violate his right to due process as guaranteed by the state and federal constitutions. Plaintiff was given the privilege of filing his petition for judicial review and having his claim considered several times by the district court without the burden of prepaying any necessary costs or fees. At the conclusion of its review, the district court found in favor of the Department and dismissed plaintiff's petition at his cost. This assessment comports with the principles of due process outlined above and the mandate of La. C.C.P. art. 5188.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court, assessing costs in this matter to plaintiff. Additionally, all costs of this appeal are

¹ Louisiana Code of Civil Procedure article 5186 provides:

An account shall be kept of all costs incurred by a party who has been permitted to litigate without the payment of costs, by the public officers to whom these costs would be payable. If judgment is rendered in favor of the indigent party, the party against whom the judgment is rendered shall be condemned to pay all costs due such officers, who have a privilege on the judgment superior to the rights of the indigent party or his attorney. If judgment is rendered against the indigent plaintiff and he is condemned to pay court costs, an affidavit of the account by an officer to whom costs are due, recorded in the mortgage records, shall have the effect of a judgment for the payment due.

Louisiana Code of Civil Procedure article 5188 provides:

Except as otherwise provided by Articles 1920 and 2164, if judgment is rendered against a party who has been permitted to litigate without the payment of costs, he *shall be condemned to pay* the costs incurred by him, in accordance with the provisions of Article 5186, and those recoverable by the adverse party. (Emphasis added.)

to be assessed against the plaintiff/appellant, Wilbert Rogers, II.²

AFFIRMED.

² See Rochon v. Administrative Remedy Procedure, 05-0452, p. 3 n.2 (La. App. 1st Cir. 3/24/06), 934 So. 2d 67, 68 n.2; State in Interest of EG, 95-0018, pp. 6-7 (La. App. 1st Cir. 6/23/95), 657 So. 2d 1094, 1098, writ denied, 95-1865 (La. 9/1/95), 658 So. 2d 1263.