

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2006 ME 23

Docket: Kno-05-441

Submitted

on Briefs: February 27, 2006

Decided: March 8, 2006

Panel: CLIFFORD, DANA, ALEXANDER, CALKINS, LEVY, and SILVER, JJ.

DAVID G. FLEMING

v.

DEPARTMENT OF CORRECTIONS et al.

PER CURIAM

[¶1] David G. Fleming appeals from an order of the Superior Court (Knox County, *Brodrick, A.R.J.*) finding his action filed pursuant to M.R. Civ. P. 80C frivolous; denying his M.R. Civ. P. 91 petition to allow waiver of filing fees; and ordering that the action would be dismissed, without prejudice, unless the full filing fee was paid within seven days. On review of a determination that a complaint is frivolous or is subject to dismissal for failure to state a claim upon which relief may be granted, we must examine the allegations in the complaint in the light most favorable to the plaintiff. *See In re Wage Payment Litig.*, 2000 ME 162, ¶ 3, 759 A.2d 217, 220. So construed, Fleming's 80C complaint states colorable claims for violation of the statutes governing placement and treatment of

prisoners within the Department of Corrections and for violation of certain civil rights incident to Fleming's incarceration and placement in a special management unit. Thus, we cannot construe the complaint as frivolous as a matter of law.

[¶2] Because we cannot construe the complaint as frivolous, although recognizing that its allegations are subject to proof, and because Fleming appears otherwise qualified as indigent for purposes of waiving the filing fee pursuant to M.R. Civ. P. 91, we vacate the order of the Superior Court and remand with direction that the filing fee for Fleming's complaint be waived and the complaint be allowed to be filed.

The entry is:

The order entered pursuant to M.R. Civ. P. 91 is vacated. Remanded for further proceedings consistent with this opinion.

For plaintiff:

David G. Fleming
New Hampshire State Prison
P.O. Box 14
Concord, NH 03302

Appellees did not file a brief.