

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. PIERCE DIVISION
Case No. 00-14202-CIV-GRAHAM/LYNCH

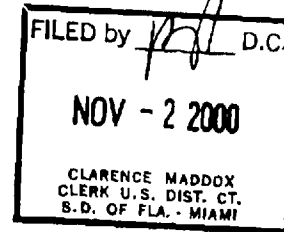
MARCELLUS M. MASON, JR.,

Plaintiff,

vs.

HEARTLAND COUNTY BOARD OF
COUNTY COMMISSIONERS

Defendant.



ORDER

THIS CAUSE came before the Court upon Defendant's Motion to Quash Summons, Or In The Alternative, Motion to Dismiss For Insufficiency of Process (D.E. #6).

Background

On July 3, 2000, Plaintiff filed his Complaint and a Motion to Proceed In Forma Pauperis ("IFP Motion").¹ Prior to the Court ruling on Plaintiff's IFP Motion, the Clerk of the Court issued Plaintiff a Summons in this matter, without requiring Plaintiff to pay the requisite filing fee. The summons was then served on Defendant.

Defendant now moves to quash summons arguing that the summons should have never been issued because Plaintiff failed to

¹ Concurrent with the issuance of this order, the Court is issuing an order denying Plaintiff's Motion to Proceed In Forma Pauperis.

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pay the requisite filing fee. The Court agrees.

Discussion

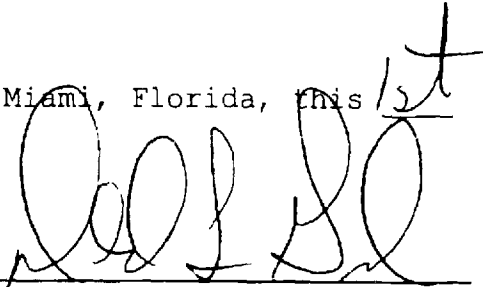
A summons cannot be issued until a complaint is filed. Fed.R.Civ.P. 4(a). A complaint is not considered filed until the filing fee is paid. Herrick v. Collins, 914 F.2d 228 (11th Cir. 1990).

The Clerk of the Court's issuance of a summons in this matter, without the requisite payment, was error. Plaintiff has not been granted leave to file in forma pauperis. As a result, the summons is defective and should be quashed. Therefore, it is

ORDERED AND ADJUDGED that Defendant's Motion to Quash summons is hereby GRANTED. It is further,

ORDERED AND ADJUDGED that Plaintiff is required to pay the requisite filing fee within ten (10) days from the date of this Order or his Complaint will be dismissed. If Plaintiff pays the requisite fees, Plaintiff will then need to perfect service on Defendant in accordance with the Federal Rules of Civil Procedure.

DONE AND ORDERED in Chambers at Miami, Florida, this 1st day of November, 2000.


DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: Magistrate Judge Lynch
Clerk of Court
Marcellus M. Mason, Jr.
Maria N. Sorolis