

JUL 23 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT L. JARRETT, JR.,

Plaintiff - Appellant,

v.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA WESTERN DIVISION
PRO SE CLERKS OFFICE, in their
official capacities; et al.,

Defendants.

No. 09-56032

D.C. No. 2:08-cv-02446-VBF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Robert L. Jarrett, Jr. appeals pro se from the district court's order dismissing his action for failure to effect service of process within 120 days, as required by Federal Rule of Civil Procedure 4(m). We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Puett v. Blandford*, 912 F.2d 270, 273 (9th Cir. 1990), and we reverse and remand.

The district court allowed Jarrett to proceed without prepayment of filing fees, *see* 28 U.S.C. § 1915(a)(1) (authorizing federal courts to allow a plaintiff to proceed without prepayment of filing fees), entitling him to have officers of the court issue and serve all process, *see* 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3); *Puett*, 912 F.2d at 273. The district court abused its discretion by dismissing Jarrett's request for court officers to effect service and then dismissing the action for lack of service. If on remand the district court determines that the complaint survives 28 U.S.C. § 1915(e)(2)(B)(i) and (ii) (requiring the district court to dismiss an action filed under § 1915(a) that is frivolous, malicious, or fails to state a claim on which relief may be granted), then the court should proceed to order service of process under § 1915(d).

Jarrett shall bear his own costs on appeal.

Jarrett's motions filed on October 13, 2009, and November 20, 2009, are denied.

REVERSED and REMANDED.