

County Civil Court: CIVIL PROCEDURE — Proceeding in Forma Pauperis. Appeal of trial court’s denial of Appellant’s application for indigency status. It was error to deny Appellant’s application for indigency status without attaching documentation to support the denial, and to prescreen Appellant’s complaint when the trial court did not find Appellant to be indigent. Reversed and remanded. *Nicholson v. Bank of America*, No. 15-AP-0011-WS (Fla. 6th Cir. App. Ct. Sept. 26, 2016).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

DAVID NICHOLSON,
Appellant,

UCN: 512015AP0011APAXWS
Appeal No: 2015-AP-0011-WS
L.T. No: 15-CC-1530-WS

v.

BANK OF AMERICA,
Appellee.

_____ /

On appeal from County Court,
Honorable Paul Firmani,

David Nicholson,
Appellant, *pro se*.

ORDER AND OPINION

It was error to deny Appellant’s application for indigency status without attaching supporting documentation, and to find the complaint failed to state a claim when the trial court did not find Appellant to be indigent. The cause is reversed and remanded to the trial court for reconsideration of the application for indigency status, or to give written reasons or attach documentation that supports a denial of indigency status.

STATEMENT OF THE CASE AND FACTS

Appellant filed a complaint against Bank of America and submitted an application for indigency status. Appellant submitted a DOC Account Statement and an affidavit of prior litigation stating Appellant had not previously been adjudicated indigent pursuant to § 57.085, Fla. Stat. The trial court’s Order on Inmate Indigency Eligibility and Judicial Review of Complaint found Appellant had at least twice in the preceding three years been adjudicated indigent for purposes of prepayment of court costs and fees, and

found Appellant had not attached a complete listing of each suit, action, claim proceeding or appeal brought by Appellant in the preceding five years. The form provides that the failure to attach said listing where applicable shall result in dismissal of the claim.

The trial court denied leave to proceed with the matter, finding “Plaintiff has failed to attach a complete listing of each suit or claim brought in any court in the preceding 5 years per F.S. 57.085(7).” The court found Appellant not to be indigent and therefore ineligible for waiver of prepayment of court costs and fees in the action. Despite finding Appellant not eligible for waiver, the court dismissed the claim for failure to state a claim for which relief may be granted, and little likelihood of success on the merits pursuant to § 57.085(9)(d), Fla. Stat.

STANDARD OF REVIEW

An order of the trial court dismissing a claim pursuant to § 57.085, Fla. Stat., is reviewed for abuse of discretion. *See Johnson v. Burns*, 804 So. 2d 345, 347 (Fla. 4th DCA 2001).

LAW AND ANALYSIS

Appellant contends it was error to deny his application for indigency based on a finding that Appellant had been found indigent for purposes of prepayment of court costs and fees at least twice in the past three years, without attaching documentation to support a denial on such basis. § 57.085, Fla. Stat., “applies only to prisoners who are adjudicated indigent and requires that their civil claims and appeals be prescreened for a determination of whether the claim is legally sufficient to state a cause of action.” *Drayton v. Moore*, 807 So. 2d 819, 821 (Fla. 2d DCA 2002). § 57.085(7) provides:

A prisoner who has twice in the preceding 3 years been adjudicated indigent under this section . . . may not be adjudicated indigent to pursue a new suit, action, claim, proceeding, or appeal without first obtaining leave of court. In a request for leave of court, the prisoner must provide a complete listing of each suit, action, claim, proceeding, or appeal brought by the prisoner or intervened in by the prisoner in any court or other adjudicatory forum in the preceding 5 years.¹

¹ The remainder of this provision of the statute requiring litigants to attach certain documentation was held unconstitutional in *Jackson v. Dep’t of Corrections*, 790 So. 2d 381 (Fla. 2000).

In *Drayton*, the Court reversed and remanded an order of the trial court for reconsideration of the application for indigency status based on the court's failure "to give written reasons or attach documentation that supports a denial of indigency status." 807 So. 2d at 822-23.

As in *Drayton*, the trial court's order included a finding by the Clerk that Appellant had at least twice in the preceding three years been adjudicated indigent, but did not include any attached documentation to support the previous findings of indigency, and had failed to attach a complete listing of prior claims. The Court in *Drayton* further held it was error to prescreen and dismiss the claim because "[t]he prescreening provisions of section 57.085(6) only apply to actions filed by 'indigent' prisoners," and "the trial court should not have prescreened the claim of a prisoner who was not adjudicated indigent." *Id.* at 823. Based on the holding in *Drayton*, it was error to deny the application for indigency status without including attached supporting documentation, and to prescreen the claim when Appellant was not found to be indigent.

CONCLUSION

It was error to deny Appellant's application for indigency status without attaching documentation to support the denial, and to prescreen Appellant's complaint when the trial court did not find Appellant to be indigent. The cause is reversed and remanded to the trial court for reconsideration of the application for indigency status, or to give written reasons or attach documentation that supports a denial of indigency status.

It is ORDERED AND ADJUDGED that the Order of the trial court is hereby REVERSED AND REMANDED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this 26th day of September, 2016.

Original order entered on September 26, 2016, by Circuit Judges Linda Babb, Kimberly Campbell and Shawn Crane.