

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ISABELLA THEODORO and PETER)	
THEODORO,)	
)	
Plaintiffs,)	
)	NO. 3:20-cv-00992
v.)	
)	
MIDDLESEX HOSPITAL, et al.,)	
)	
Defendants.)	

ORDER

Plaintiffs Isabella and Peter Theodoro, Tennessee residents, filed a pro se Complaint in diversity against Middlesex Hospital of Middletown, Connecticut, and 41 other out-of-state Defendants. (Doc. No. 1.) They also filed a joint application to proceed as a pauper. (Doc. No. 2.)

The Court may authorize a person to file a civil suit without paying the filing fee. 28 U.S.C. § 1915(a). Section 1915 is intended to insure that indigent persons have equal access to the judicial system by allowing them to proceed without having to advance the fees and costs associated with litigation. Neitzke v. Williams, 490 U.S. 319, 324 (1989); Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 342 (1948). Pauper status does not require absolute destitution. Adkins, 335 U.S. at 339; Foster v. Cuyahoga Dep’t of Health and Human Servs., 21 F. App’x 239, 240 (6th Cir. 2001). Rather, the relevant question is “whether the court costs can be paid without undue hardship.” Foster, 21 F. App’x at 240. An application is sufficient if it establishes that a plaintiff cannot, because of poverty, afford to pay for the costs of litigation and still afford “the necessities of life.” Adkins, 335 U.S. at 339. The Court’s review is based solely upon an applicant’s affidavit. See Gibson v. R.G. Smith Co., 915 F.2d 260, 262-63 (6th Cir. 1990). “The decision whether to

permit a litigant to proceed [as a pauper] is within the Court’s discretion.” Foster, 21 F. App’x at 240.

Plaintiffs are a married couple with three dependents. (Doc. No. 2.) In the application, they describe their combined income as \$4,000 per month for the last twelve months and \$3,000 per month expected going forward. (Id. at 1-2.) This results in an approximate 2020 annualized income of \$46,000. Plaintiffs describe monthly expenses that approximate this income, driven largely by high mortgage and vehicle payments. (*Id.* at 4-5.) While Plaintiffs report no cash assets, they note at 2017 vehicle valued at \$15,000. (*Id.* at 3.)

Based on the application, Plaintiffs have not established that that they are indigent, *see* 28 U.S.C. § 1915(a)(1), or demonstrated that payment of the filing fee would be an undue hardship that would deprive them of “the necessities of life.” Adkins, 335 U.S. at 339. Rather, they are “merely in the position of having to weigh the financial constraints posed if [they] pursue[] [the lawsuit] against the merits of the case.” Franklin v. Johnson Control/Adient, No. 3:19-cv-01174, 2020 WL 996913, at *1 (M.D. Tenn. Mar. 2, 2020) (quoting Glover v. Colvin, No. CIV.A. 2014-216 WOB, 2015 WL 417988, at *2 (E.D. Ky. Jan. 30, 2015) (citation omitted)). Specifically, Plaintiffs have an annual family income that is more than 33% above the 2020 poverty level for a five-person household. See U.S. Dep’t of Health and Human Servs., Poverty Guidelines for 2020, <https://aspe.hhs.gov/poverty-guidelines> (noting poverty level for five-person household is \$30,680).¹ Thus, the Court finds that Plaintiffs are not eligible for pauper status. See Foster, 21 F. App’x at 240 (affirming denial of pauper status based on family income of \$42,000); Franklin,

¹ The Complaint involves the alleged seizure of a child at birth in Connecticut. It is unclear whether this child is included in the three dependents listed by Plaintiffs on the application. If Plaintiffs currently have only two children in their household, their reported income is over 40% higher than the 2020 poverty level for a four-person household. *See Poverty Guidelines for 2020* (noting poverty level for four-person household is \$26,200).

2020 WL 996913, at *1-2 (denying pauper status, despite lack of cash and reports that expenses exceed income, because family income significantly exceeded poverty-level for five-person household).

Accordingly, Plaintiffs' joint application to proceed as a pauper (Doc. No. 2) is **DENIED**. This case may not proceed on the merits unless Plaintiffs pay the initial filing fee. 28 U.S.C. § 1914. Therefore, to continue this action Plaintiffs **MUST**, within **30 DAYS** of the date this Order is entered on the docket, submit the \$400.00 filing fee in full to the Clerk of Court. Failure to comply with this Order, or request an extension of time, by the deadline may result in dismissal of this action for failure to prosecute and failure to comply with the court's Order.

IT IS SO ORDERED.



WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE