

AUG 04 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HERMAN KELLY,

Plaintiff - Appellant,

v.

WILL SMITH; et al.,

Defendants - Appellees.

No. 06-56570

D.C. No. CV-06-03108-RSWL

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Ronald S.W. Lew, District Judge, Presiding

Submitted July 22, 2008\*\*

Before: B. FLECTCHER, THOMAS and WARDLAW, Circuit Judges.

Herman Kelly appeals pro se from the district court's order denying his motion to proceed in forma pauperis in his copyright infringement action. We

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

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

have jurisdiction pursuant to 28 U.S.C. § 1291. We review for abuse of discretion, *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990), and we affirm.

The district court did not abuse its discretion in finding that Kelly failed to demonstrate indigence in light of the income reported in his financial affidavit. *See id.* (affirming broad deference afforded to lower court in reviewing a denial of leave to proceed in forma pauperis).

All pending motions are denied.

**AFFIRMED.**