

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

-----  
GARY B. CAMPBELL,

Plaintiff,

v.

WOOD COUNTY SHERIFF DEPUTY  
TODD JOHNSON,

Defendant.  
-----

ORDER

04-C-661-C

In this closed case, plaintiff Gary Campbell claimed in his complaint that defendant Todd Johnson had subjected him to excessive force on March 31, 2004. In June 2005, I granted partial summary judgment to defendant, finding from the undisputed facts that defendant had not used excessive force before plaintiff's arrest. However, I concluded that facts in dispute prevented a decision whether defendant used excessive force during and after the time plaintiff was handcuffed. The case went to trial on January 9, 2006, and the jury rendered a verdict in defendant's favor. Judgment was entered on January 12, 2006. Plaintiff is presently pursuing an appeal.

On January 26, 2006, defendant filed a bill of costs. Subsequently, plaintiff filed a

motion to stay imposition of costs pending his appeal. That motion is presently before the court.

Plaintiff does not say in his motion why he wants a stay. Presumably, he is of the opinion that he will win his case on appeal and be purged of the obligation to pay defendant's costs. The mere possibility that a losing party will become a prevailing party on appeal is not a ground for staying imposition of costs.

As plaintiff appears to be aware, there is a strong presumption in favor of awarding costs to a prevailing party. Although the presumption may be overcome by a showing of indigency by the losing party, McGill v. Faulkner, 18 F.3d 456, 457 (7th Cir. 1994); Badillo v. Central Steel & Wire Co., 717 F.2d 1160, 1165 (7th Cir.1983), the burden is on the losing party to show that he is unable to pay the costs presently and that he is not likely to be able to pay the costs in the future. Corder v. Lucent Technologies, Inc., 162 F.3d 924, 929 (7th Cir.1998); McGill v. Faulkner, 18 F.3d at 459. Such a showing would be nearly impossible for a losing, indigent prisoner litigant such as plaintiff to make.

Fed. R. Civ. P. 54(d)(1), which authorizes the imposition of costs on non-prevailing parties, applies to proceedings in forma pauperis. Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998) citing McGill v. Faulkner, 18 F.3d 456 (7th Cir. 1994) (“all § 1915 has ever done is excuse pre-payment of the docket fees; a litigant remains liable for them, and for other costs, although poverty may make collection impossible”). At the time Congress enacted the

Prison Litigation Reform Act, it rewrote 28 U.S.C. § 1915 to provide expressly,

(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings. . . .

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

Because costs may be collected from prisoner accounts in installments of 20% of each deposit made to the account, so long as the prisoner remains incarcerated, plaintiff will be able to pay the prevailing party at least a portion of the costs he owes. True, when I examined plaintiff's trust fund account statement for the purpose of assessing him an initial partial payment of the fee for filing his appeal, I concluded that plaintiff did not have the means to prepay an initial partial payment. However, the absence of means then does not predict the absence of means in plaintiff's future.

In sum, it will cause plaintiff no harm if costs are imposed immediately. If any deposit is made to plaintiff's account, 20% of the deposit will have to be collected to pay defendant's costs in this case. If it turns out that plaintiff succeeds on appeal, defendant will have to

repay plaintiff whatever meager amounts he may be able to collect.

ORDER

IT IS ORDERED that plaintiff's motion for a stay of imposition of costs in this case is DENIED.

Entered this 10th day of February, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge