

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

GARY B. CAMPBELL,

Plaintiff,

v.

WOOD COUNTY SHERIFF DEPUTY
TODD JOHNSON,

Defendant.

MEMORANDUM

04-C-661-C

In an order entered in this case on February 10, 2006, I denied plaintiff's motion to stay the imposition of costs. In the order, I noted that when Congress enacted the Prison Litigation Reform Act, it rewrote 28 U.S.C. § 1915 to provide expressly,

(f)(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).

I concluded that so long as plaintiff remains incarcerated, costs may be collected from his

prison account in installments of 20% of each deposit made to the account until the full amount of the costs assessed by the clerk of court have been paid. In arriving at this conclusion, however, I did not draw the parties' attention to the fact that § 1915(f)(2)(B) contains a typographical error. For the sake of clarity, and to assist the clerk of court in determining precisely how the costs she assessed against plaintiff are to be administered, I offer these additional comments.

As noted above, § 1915(f)(2)(B) provides that prisoners must make payments for costs "in the same manner as is provided for filing fees under subsection (a)(2)." However, subsection (a)(2) merely states that a prisoner bringing suit shall submit a certified copy of his trust fund account statement. It does not describe the manner in which prisoners must make payments for filing fees. That description lies in subsection (b)(2). Therefore, I conclude it is subsection (b)(2) that governs the collection of costs. The only courts to have considered the question agree with this conclusion. Talley-Bey v. Knebl, 168 F.3d 884, 887 (6th Cir. 1999) ("Section 1915(f)(2)(B) mistakenly refers to § 1915(a)(2) as the authoritative subsection for payment process. However, . . . § 1915(a)(2) does not contain a payment procedure . . . the payment process is located in § 1915(b)(2)"); Johnson v. McNeil 217 F.3d 298, 300 (5th Cir. 2000) ("subsection (f)(2)(B)'s reference to subsection (a)(2) is a scrivener's error as reference should be to subsection (b)(2)"); Whitfield v. Scully, 241 F.3d 264, 273 (2d Cir. 2001) ("although the statute refers to § 1915(a)(2) for manner

of payment of costs, the reference is a typographical error (as it makes the statute unintelligible); the actual process for payment of costs is described in § 1915(b)(2)").

The manner in which filing fees are collected under subsection (b)(2) is as follows: the prisoner is to make monthly payments of 20 percent of the preceding month's income credited to his account. The agency having custody of the prisoner is to forward payments from the prisoner's account to the clerk of court each time the amount in the account exceeds \$10 until the costs are paid. Thus, it will be up to the clerk of court to notify the warden of plaintiff's obligation to pay costs at the time costs are assessed so that the appropriate amounts may be collected from the plaintiff's account. In addition, it is the responsibility of the clerk of court to remit to the party receiving an award of costs the amounts collected from plaintiff's account for this purpose at such intervals as the clerk deems appropriate.

Entered this 22nd day of February, 2006.

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