

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

WAYNE J. HART, JR.,

Plaintiff,

v.

MICHAEL THURMER, SUSAN KIMBALL,
PAUL SUMNIGHT, JOHN DOE 1-50 and
JANE DOE 1-50,

Defendants.

ORDER

11-cv-604-bbc

Judgment was entered in this case on October 19, 2012 granting defendants' motion for summary judgment and closing this case. Now plaintiff has filed a notice of appeal and a request for leave to proceed on appeal in forma pauperis. He has submitted a trust fund account statement for the six months preceding the filing of his appeal.

Plaintiff's request for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether plaintiff's request must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g) or because the appeal is not taken in good faith. Plaintiff does not have three strikes against him and I do not intend to certify that his appeal is not taken in good faith.

However, plaintiff is required to make an initial partial payment of the filing fee that

has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). From plaintiff's trust fund account statement, I conclude that he qualifies for indigent status and assess plaintiff an initial partial payment of the \$455 fee for filing his appeal in the amount of \$4.34.

If plaintiff does not have the money to make the initial partial appeal payment in his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. The only amount plaintiff must pay at this time is the \$4.34 initial partial appeal payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to make sure they are aware they should send plaintiff's initial partial appeal payment to this court.

ORDER

IT IS ORDERED that plaintiff Wayne Hart's request for leave to proceed in forma pauperis on appeal is GRANTED. Plaintiff may have until January 4, 2013, in which to submit a check or money order made payable to the clerk of court in the amount of \$4.34. If, by January 4, 2013, plaintiff fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this

appeal.

Further, the clerk of court is directed to insure that the court's financial records reflect plaintiff's obligation to pay the \$4.34 initial partial payment and the remainder of the \$455 fee in monthly installments.

Entered this 11th day of December, 2012.

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