

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

GARY R. McCAUGHTRY,

Defendant.

ORDER

01-C-209-C

In an order dated November 24, 2003, I reviewed plaintiff's request for leave to proceed on appeal in forma pauperis from the judgment entered in this case on October 8, 2003 and the subsequent order denying plaintiff's Rule 59 motion. I concluded that plaintiff did not have three strikes against him under 28 U.S.C. § 1915(g) and that I would not certify the appeal as having been taken in bad faith. However, I could not find that plaintiff was financially eligible to proceed under § 1915, because plaintiff had not submitted a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his appeal. Therefore, I gave plaintiff until December 12, 2003, in which to submit a trust fund account statement. I advised plaintiff that if, by December 12,

2003, he failed to submit the required trust fund account statement or show cause for his failure to do so, I would deny his request for leave to proceed in forma pauperis on appeal on the ground that he has failed to show that he is entitled to indigent status on appeal.

Plaintiff did not submit a trust fund account statement as required. However, he has shown good cause for his failure to do so. In a statement he declares to be true under penalty of perjury, plaintiff avers that prison officials have refused to give him a copy of his trust fund account statement because he has exceeded the \$200 legal loan limit and because 100% of his income is being taken promptly upon its deposit to pay for his numerous other legal debts.

In Lindell v. McCallum, slip op. 03-1550 (7th Cir. Dec. 12, 2003), the Court of Appeals for the Seventh Circuit remanded a case plaintiff had filed in this court earlier this year. In that case, I had denied plaintiff pauper status because it was clear from plaintiff's numerous motions for orders directing prison officials to advance him additional legal loans that he had exceeded his legal loan limits and would be unable to prosecute the case to completion. In reversing and remanding the case, Judge Posner wrote,

Determining that Lindell has already borrowed more than the statutory limit of \$200 a year, the district judge enjoined him from litigating further, lest she have to order Wisconsin to lend him more money. But there is no possibility that she would have to order Wisconsin to lend him a penny. The Wisconsin statute is not intended for the funding of prisoners' suits---as explained in the Luedtke [v. Bertrand], 32 F. Supp. 2d 1074, 1076 (E.D. Wis. 1999)] case, the loans authorized by the statute are not "funds which are disbursed or credited to an inmate's account to be used as he wishes" but rather "simultaneous credits and debit . . . for the sole purpose of enabling prisoners to purchase 'paper, photocopy work, or postage' on credit." And Lindell has "no constitutional entitlement to subsidy," Lewis v. Sullivan, 279 F.3d 526, 528

(7th Cir. 2002), to prosecute a civil suit; like any other civil litigant, he must decide which of his legal actions is important enough to fund. Lucien v. DeTella, 141 F.3d 773, 774 (7th Cir. 1998). If he is able to convince Wisconsin to extend him more credit for his legal endeavors, in apparent violation of Wisconsin law, any debt arising from that extension of credit will be a matter strictly between him and Wisconsin, and not any business of the federal courts.

Although it appears clear from Judge Posner's comments that the court is not to concern itself with a plaintiff's inability to pay for the paper, photocopies or postage necessary to prosecute a civil action or appeal, I do not believe that I can ignore the prison officials' refusal to supply plaintiff with a certified copy of his trust fund account statement simply because he cannot pay for it. Unlike items such as pens, paper, postage and photocopy privileges that prison officials may limit so long as they do not disturb an inmate's reasonable access to the courts, trust fund account statements are mandated by federal statute to be "obtained from the appropriate official of each prison at which the prisoner is or was confined" whenever a prisoner files a complaint or appeal from a final judgment. 28 U.S.C. § 1915(a)(2). Plaintiff has filed an appeal from a final judgment and has asked the institution to send the court a certified copy of his trust fund account statement. The institution has no choice but to comply with the directive of Congress and provide plaintiff with a certified copy of his trust fund account statement for the period beginning approximately May 20, 2003 and ending approximately November 20, 2003.

ORDER

IT IS ORDERED that a decision on plaintiff's request for leave to proceed in forma pauperis on appeal is STAYED. Plaintiff may have until January 5, 2004, in which to submit a trust fund account statement for the period beginning approximately May 20, 2003 and ending approximately November 20, 2003. If, by January 5, 2004, plaintiff does not submit the necessary trust fund account statement, I will treat the institution's refusal to provide the statement because of plaintiff's indigency as proof that plaintiff is qualified financially to proceed in forma pauperis on appeal and I will grant his request.

Entered this 16th day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge