

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

NATHANIEL ALLEN LINDELL,

Plaintiff,

ORDER

v.

02-C-459-C

JEFFREY FRIDAY, Officer 2 at Waupun
Correctional Institution; STEVEN HOUSER,
captain at Waupun Correctional Institution;
WILLIAM SCHULTZ, Financial Specialist 2
at Waupun Correctional Institution.

Defendants.

Judgment was entered in this case on March 9, 2004, following a jury trial and verdict in defendants' favor. On March 11, 2004, plaintiff filed a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. At the same time, plaintiff filed a request for an order directing that a copy of the transcript of the trial proceedings in this case be produced and sent to him so that he can submit it to the court of appeals for its consideration in connection with an appeal. I construe plaintiff's request to include a motion for preparation of the trial transcript at government expense pursuant to 28 U.S.C. §753(f).

28 U.S.C. §753(f) provides in relevant part:

Each reporter may charge and collect fees for transcripts

requested by the parties . . . Fees for transcripts furnished in [actions such as actions brought pursuant to 42 U.S.C. § 1983] to persons permitted to appeal in forma pauperis shall . . . be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). The reporter may require any party requesting a transcript to prepay the estimated fee in advance except as to transcripts that are to be paid for by the United States.

Plaintiff has not yet filed a notice of appeal. Nevertheless, he contends in his motion that the issues he plans to raise on appeal are explained in his Rule 59 motion.

In an order dated March 16, 2004, I denied plaintiff's Rule 59 motion, after concluding that his claims of court error are without legal merit. Even if plaintiff intends to raise on appeal the same issues he raised in his Rule 59 motion, I would certify that the appeal is not frivolous but presents a substantial question. Plaintiff's case was sufficiently substantive to warrant a jury trial. Although a verdict was returned in defendants' favor, plaintiff's claims of court error during the trial cannot properly be presented on appeal without a transcript. However, I will stay a final decision on plaintiff's motion until after he files his notice of appeal.

Plaintiff is reminded also that if he wishes to proceed in forma pauperis on appeal, he should submit with his notice of appeal a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal.

ORDER

IT IS ORDERED that a decision on plaintiff's request for preparation of a trial transcript at government expense pursuant to 28 U.S.C. §753(f) is STAYED pending plaintiff's filing of a notice of appeal.

Entered this 29th day of March, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge