

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

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AUSTIN C. SZYMANKIEWICZ,

Plaintiff,

v.

DAVID PICARD, CONRAD REEDY,  
HAYLEY HERMANN, DAVID TARR,  
MIKE DITTMAN and DENICE  
DOYING,

Defendants.  
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ORDER

04-C-186-C

Plaintiff Austin Szymankiewicz has filed a “Motion to Correct Clerical Mistake,” “Motion for Court Order to Court Reporter to Prepare and Provide Plaintiff Trial Transcript of May 02, 2005,” and a “Motion to Proceed on Appeal In Forma Pauperis.” Starting with the last motion first, in an order dated June 17, I addressed plaintiff’s notice of appeal, which I construed to include a request for leave to proceed in forma pauperis on appeal. I found that plaintiff could proceed in forma pauperis on appeal so long as he submitted a trust fund account statement from which I could assess an initial partial payment of the filing fee as required by the 1996 Prison Litigation Reform Act and 28 U.S.C. § 1915(a)(2). Plaintiff’s

newest motion is accompanied by a trust fund account statement, from which I have calculated plaintiff's initial partial payment to be \$1.65. Plaintiff is to submit a check or money order made payable to the clerk of court in this amount no later than July 28, 2005.

I construe plaintiff's "Motion for Court Order to Court Reporter . . ." as a motion for preparation of the trial transcript at government expense pursuant to 28 U.S.C. §753(f) and will grant that motion. Without access to the trial transcript, it would be difficult for the court of appeals to assess plaintiff's arguments on appeal.

In his motion to "correct clerical mistake," plaintiff points out correctly that in this court's orders of May 13, 2005 and June 17, 2005, I misstated that at trial, the jury had found in favor of defendant Doying. In fact, I granted defendant Doying's motion for judgment as a matter of law at the close of plaintiff's case. Neither misstatement was central to the matters resolved in the May 13 and June 17 orders. In the May 13 order, I considered a motion plaintiff had filed on the day of trial requesting reconsideration of this court's March 16 order granting summary judgment for all of the defendants except defendant Doying. In the June 17 order, I found plaintiff qualified to proceed in forma pauperis on appeal upon proof of indigency. Nevertheless, I will make it clear for the record in this order that the trial ended when I granted defendant's motion for judgment as a matter of law.

## ORDER

IT IS ORDERED that

1. Plaintiff's request for leave to proceed in forma pauperis on appeal is GRANTED. Plaintiff may have until July 28, 2005, in which to submit a check or money order made payable to the clerk of court in the amount of \$1.65 as an initial partial payment of the \$255 fee for filing his notice of appeal. If, by July 28, 2005, plaintiff fails to submit the initial partial payment or show cause for his failure to do so, I will advise the court of appeals of his failure to pay so that it can take whatever action it deems appropriate with respect to his appeal.

2. Plaintiff's motion for preparation of a transcript of the proceedings in the trial of this case is GRANTED, with the fees therefor to be paid by the United States, pursuant to 28 U.S.C. §753(f).

3. Plaintiff's "Motion to Correct Clerical Mistake" is GRANTED. The record is corrected to show that plaintiff's claim against defendant Doying was not sent to the jury

for a decision but was dismissed on defendant's motion for judgment as a matter of law.

Entered this 7th day of July, 2005.

BY THE COURT:

*Barbara B. Crabb*

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BARBARA B. CRABB  
District Judge