

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

JAMES JENKINS,

Plaintiff,

v.

JAMES WILSON and
TIM BENGSTON,

Defendants.

MEMORANDUM

05-C-609-C

This memorandum is intended to notify the Court of Appeals for the Seventh Circuit of plaintiff James Jenkins' failure to comply with this court's orders concerning the directive that he pay an initial partial payment for filing an appeal in this action. This court's record reveals that plaintiff filed a notice of appeal in this case on March 12, 2007, several months after judgment was entered for defendants on November 1, 2006. In an order dated March 14, 2007, I found that plaintiff is not barred by the three-strikes provision of 28 U.S.C. § 1915(g) from proceeding on appeal in forma pauperis and I stated that I do not intend to certify that his appeal is not taken in good faith. However, I told plaintiff that because he is a prisoner, he is required to pay an initial partial payment of the \$455 fee for

filing his appeal. Based upon the trust fund account statement plaintiff submitted with his notice of appeal, I assessed him an initial partial payment in the amount of \$.67 and gave him until April 3, 2007 to pay it. Subsequently, plaintiff asked the court to waive the initial partial payment pursuant to 28 U.S.C. § 1915(b)(4). This motion was denied on April 6, 2007, on the authority of Newlin v. Helman, 123 F.3d 429, 435 (7th Cir. 1997), rev'd on other grounds by Lee v. Clinton, 209 F.3d 1025 (7th Cir. 2000) and Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000), which held in part that a six-month trust fund account statement showing periodic deposits indicates the prisoner has means even if he lacks assets at the moment he files his appeal. Also in the April 6 order, I extended to May 7, 2007 the deadline within which plaintiff was to pay the initial partial payment he had been assessed.

On May 2, 2007, plaintiff advised the court that he could not pay a \$.67 initial partial payment. However, he did not support his submission with a recent copy of his trust fund account statement showing that all deposits to his account had stopped for the full period between early March (where his last statement left off) to May, when he was asking a second time for application of 28 U.S.C. § 1915(b)(4) to his appeal. In one last effort to accommodate plaintiff's concerns, I extended to May 24, 2007 the deadline within which plaintiff was to pay the \$.67 initial partial payment or submit a trust fund account statement showing that he had received no funds to his account since the beginning of March, 2007. I told plaintiff that if, by May 24, 2007, he did not pay the initial partial payment or submit

an updated trust fund account statement, I would advise the court of appeals of his failure to pay the partial fee for his appeal so that it could take whatever action it deemed appropriate with respect to his appeal. Plaintiff has neither paid the \$.67 initial partial payment nor submitted an updated trust fund account statement.

Entered this 5th day of June, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge