

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

JOSEPH VAN PATTEN,

Plaintiff,

ORDER

v.

06-C-374-C

MATTHEW FRANK,
JOSEPH LADWIG, WARDEN
DEPPISCH and DR. LUY,fr

Defendants.

As directed in this court's order of August 24, 2007, plaintiff Joseph Van Patten has submitted a certified copy of his trust fund account statement so that a determination may be made whether he is indigent for the purpose of proceeding on appeal in forma pauperis. (In the August 24 order, I found that plaintiff's appeal is not taken in bad faith and that he is not barred by the three strikes provision of 28 U.S.C. § 1915(g) from proceeding with his appeal in forma pauperis.)

Unfortunately, plaintiff's trust fund account statement reveals that he has been receiving periodic income to his inmate account since at least March 30, 2007, and this court's financial records reveal that despite this income, plaintiff has not been paying the

debts he incurred under the act when he filed his complaint in this case and an earlier interlocutory appeal. Therefore, he may not proceed in forma pauperis with his present appeal.

Plaintiff was granted leave to proceed in forma pauperis in this action on October 18, 2006. At that time, he paid an initial partial payment of the \$350 filing fee in the amount of \$23.96. Subsequently, plaintiff filed a notice of appeal from this court's February 12, 2007 order denying his request to dismiss his case voluntarily without prejudice. (In the order, I told plaintiff that the interests of justice required a voluntary dismissal at that particular stage of the lawsuit to be with prejudice, and I gave him an opportunity to withdraw his notice of voluntary dismissal, which he did.) Later, on March 7, 2007, the Court of Appeals for the Seventh Circuit dismissed plaintiff's appeal and directed him to pay the appellate filing fee of \$455 from his prison trust fund account "when such funds become available." To date, plaintiff has made only one payment on his debts in the amount of \$4. This payment was received on March 5, 2007.

In Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), the Court of Appeals for the Seventh Circuit cautioned prisoner litigants to keep a watchful eye on their accounts and insure that amounts owed under the Prisoner Litigation Reform Act are withdrawn on a monthly basis. "If in a given month the prison fails to make the required distribution from the trust account, the prisoner should notice this and refrain from spending funds on

personal items until they can be applied properly.” Id. at 776. Nonpayment of obligations a prisoner incurs under the Prisoner Litigation Reform Act for any reason other than destitution is to be understood as a voluntary relinquishment of the prisoner's right to proceed in forma pauperis in future suits or appeals, just as if the prisoner had a history of frivolous litigation. Thurman v. Gramley, 97 F.3d 185, 188 (7th Cir. 1996).

Plaintiff is not destitute. His certified trust fund account statement for the period beginning March 15, 2007 and ending July 11, 2007 shows that during this period , plaintiff received \$22.80 into his account during the last two weeks of March, \$65.22 in April, \$69.40 in May, \$137.88 in June, and \$25.84 between July 1 and July 11, 2007. Fees for filing more than one lawsuit or appeal accumulate. Newlin v. Helman, 123 F.3d 429, 436 (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). This means that between October 19, 2006, when plaintiff was allowed to proceed with his action, until February 20, 2007, when plaintiff filed his notice of an interlocutory appeal, plaintiff owed this court twenty percent of his income for the months of October, November, December and January, and forty percent of his income for each month thereafter. This means that plaintiff owed at least \$9.12 in April for the income he received in March, \$26.08 for the income he received in April, \$27.76 for the income he received in May, \$55.15 for the income he received in June, and at least \$10.34 for the income he received in the first part of July, for a total of \$128.45.

Because plaintiff's trust fund account statement does not show what income he may have had between October 19, 2006 and mid-March, the point at which his present trust fund account statement begins, or what income he received after July 11, 2007, where his present statement ends, it is not possible to determine the exact amount plaintiff must pay in order to bring his account up-to-date. That job belongs to plaintiff and prison officials at the institutions in which he has been confined during these past months. See Hall v. Stone, 170 F.3d 706 (7th Cir. 1999) (order under 28 U.S.C. § 1915(b) directs Warden as trustee of account to disburse amounts owed in accordance with statutory directive).

The record in this case reveals that when he filed his complaint in this court, plaintiff was confined at the Redgranite Correctional Institution. He was released on July 11, 2007. Therefore the warden of the Redgranite Correctional Institution or his designee will have to figure the amount plaintiff owes from whatever time after October 19, 2006 plaintiff began to receive money into his account until his release on July 11. Sometime after his release from Redgranite but before August 8, 2007, plaintiff was reincarcerated at the Shawano County jail. (The return address on plaintiff's August 8, 2007 Rule 59 motion is the address of the Shawano County Jail.) Therefore, the sheriff of the Shawano County jail will have to figure the amount plaintiff owes from the time he entered the jail until the present.

In order to qualify for indigent status on his present appeal, plaintiff will have to pay the full amount he is in arrears (at least \$128.45 plus whatever additional sums will be

calculated from the relevant months discussed above), and provide this court with copies of his prison financial records for the periods between October 19, 2006 and March 15, 2007 and between the time he was incarcerated at the Shawano County jail until the present, so that this court can confirm that plaintiff has paid the full amount he is in arrears. At this point, however, plaintiff's request for leave to proceed in forma pauperis on appeal must be denied for his failure to pay amounts he owes under the Prison Litigation Reform Act despite his having the means to do so.

ORDER

IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal is DENIED.

FURTHER, IT IS ORDERED that until plaintiff has paid the amounts he is in arrears under § 1915(b)(2) in this case, he may not apply for leave to proceed in forma pauperis in

any future action in this court except under the circumstances permitted under 28 U.S.C.
§ 1915(g).

Entered this 17th day of September, 2007.

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