

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

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CHAD GOETSCH,

Plaintiff,

v.

DR. LAETITIA LEY,
DR. MIKE VANDENBROOK and
DR. SCOTT RUBIN-ASCH,

Defendants.

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ORDER

09-cv-228-bbc

Judgment was entered in this case on January 3, 2011, granting defendants' motion for summary judgment and closing this case. On February 18, I denied plaintiff's first motion for reconsideration. On February 25, plaintiff filed a second motion for reconsideration. On March 9, he filed a notice of appeal and a motion for use of release account funds to pay his entire appeal fee. On March 21, the clerk received a \$5 check from plaintiff. This check will be applied to any initial partial payment he is assessed for his appeal.

On March 23, plaintiff filed a request for leave to proceed on appeal in forma pauperis

and a renewed motion for use of his release account to pay the entire appeal fee. On March 25, I denied plaintiff's second motion for reconsideration. That same day, he submitted his trust fund account statement and a letter asking that his appeal not be considered until his second motion for reconsideration was decided. I now address plaintiff's requests to proceed in forma pauperis on appeal and for the use of release funds to pay his entire appeal fee.

Plaintiff's request for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether plaintiff's request must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g) or because the appeal is not taken in good faith. Plaintiff does not have three strikes against him, and I do not intend to certify that his appeal is not taken in good faith.

The only other hurdle to plaintiff's proceeding with his appeal in forma pauperis is the requirement that he make an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). From plaintiff's trust fund account statement, I conclude that he qualifies for indigent status. Further, I assess plaintiff an initial partial payment of the \$455 fee for filing his appeal in the amount of \$12. Because plaintiff has already paid \$5, he owes \$7 to meet his required initial partial payment.

However, plaintiff asks that he be allowed to pay the entire appeal fee from his release fund account. The use of release account funds is governed by state law. According to Wis.

Admin. Code § DOC 309.466(2), “[r]elease account funds may not be disbursed for any reason until the inmate is released to field supervision, except to purchase adequate clothing for release and for out-of-state release transportation.” The only exception is that release funds can used to pay an initial partial filing fee under the 1996 Prison Litigation Reform Act. Because release funds cannot be used for any other reason, I will deny plaintiff’s request to use his release fund account to pay the entire appeal fee. If plaintiff does not have the \$7 in his regular account to pay his initial partial payment of his appeal fee, his release account funds may be used to make the \$7 payment that is part of his initial partial payment.

ORDER

IT IS ORDERED that plaintiff Chad Goetsch’s request for leave to proceed in forma pauperis on appeal is GRANTED. Plaintiff may have until April 18, 2011, in which to submit a check or money order made payable to the clerk of court in the amount of \$7. If, by April 18, 2011, plaintiff fails to make this payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

The clerk of court is to insure that the court's financial records reflect plaintiff's obligation to pay the \$7 initial partial payment and the remainder of the \$455 fee in monthly installments.

Entered this 28th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge