

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

JOSE SOTO,

Plaintiff,

v.

DONALD MORGAN and
TRAVIS HAAG,

Defendants.

ORDER

11-cv-567-slc

On February 7, 2013, I partially granted defendants' motion for summary judgment and dismissed defendants Dalia Suliene, Lillian Tenebrusco, Janel Nickel, Steve Helgersen and Nurse Kim Campbell from this case. Judgment dismissing those defendants was entered on February 8, 2013. On March 13, 2013, I stayed further proceedings in this case pending recruitment of counsel for plaintiff Jose Soto.

Don Schott and Khalaf Khalaf, members of the Wisconsin Bar, have agreed to represent plaintiff in this case with the understanding that they will serve with no guarantee of compensation for their services. It is this court's intention that these attorneys will represent plaintiff in proceedings in this court only.¹

As discussed in the March 13 order, going forward plaintiff must work directly with his lawyers and permit them to exercise their professional judgment to determine which matters are appropriate to bring to the court's attention and in what form. Plaintiff will not have the right to require counsel to raise frivolous arguments or to follow every directive he makes. He should be prepared to accept the strategic decisions made by his lawyers even if he disagrees with some

¹ "Proceedings in this court" include all matters leading up to a final judgment on the merits, the filing of a Notice of Appeal, if appropriate, and ensuring that all steps are taken to transfer the record to the Court of Appeals for the Seventh Circuit.

of them, and he should understand that it is unlikely that this court will recruit another lawyer to represent him should plaintiff choose not to work with these lawyers.

In an unrelated matter, plaintiff has filed an notice of interlocutory appeal from the court's February 7, 2013 order on summary judgment. This proverbial train left the station before this court found attorneys to represent plaintiff, so it cannot be called it back, it has to run the route. Because plaintiff is a prisoner, he is subject to the 1996 Prison Litigation Reform Act. This means that I must determine whether his appeal is barred because he has three strikes against him under 28 U.S.C. § 1915(g) or whether it must be certified as not having been 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 1996 Prison Litigation Reform Act requires also that plaintiff pay the \$455 fee for filing his notice of appeal, beginning with an initial partial payment 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). Plaintiff has submitted the necessary trust fund account statement. 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 \$49.07.

If plaintiff does not have the money to make the initial partial appeal payment in his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. The only amount plaintiff must pay at this time is the \$49.07 initial partial appeal payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison

officials to make sure they are aware they should send plaintiff's initial partial appeal payment to this court.

ORDER

IT IS ORDERED that

(1) Don Schott and Khalaf Khalaf are appointed to represent plaintiff Jose Soto for the remainder of this case. All proceedings in this case remain STAYED pending a status conference, at which time a new schedule will be set for moving this case to resolution.

(2) Plaintiff's request for leave to proceed *in forma pauperis* on his interlocutory appeal is GRANTED. Plaintiff may have until April 17, 2013, in which to submit a check or money order made payable to the clerk of court in the amount of \$49.07. If, by April 17, 2013, plaintiff fails to pay the initial partial 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.

Further, the clerk of court is requested to insure that the court's financial records reflect plaintiff's obligation to pay the \$49.07 initial partial payment and the remainder of the \$455 fee in monthly installments.

Entered this 2nd day of April, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge