

# IN THE MICHIGAN COURT OF APPEALS

## ORDER

Re: **In re Witzke**  
Docket No. **313507**  
L.C. No. **12-016086-AH**

Donald S. Owens, Judge, acting under MCR 7.211(E)(2), orders:

The motion for reconsideration is **DENIED IN PART AND GRANTED IN PART**. The motion is **DENIED IN PART** as to plaintiff's arguments that MCL 600.2963 does not apply to this case. By the plain language of MCL 600.2963(1) that statute applies where a prisoner of the Department of Corrections files "a civil action as plaintiff in a court of this state." An action for superintending control is a civil action. MCR 3.301(A)(1). However, the motion for reconsideration is **GRANTED IN PART** as set forth below. Accordingly, the December 6, 2012 order is **VACATED**.

The motion to waive fees pursuant to MCR 7.202(4) and MCR 7.206(D)(1)(d) is **DENIED** because MCL 600.2963 mandates that a prisoner pursuing a civil action be liable for the filing fees. Plaintiff is not required to pay an initial partial filing fee. MCL 600.2963(7). By refileing his returned pleadings and making his alternative request for waiver of the initial partial filing fee plaintiff has manifested his intent to continue with this case. Thus, plaintiff is responsible for paying the \$375 filing fee and may not file another new civil appeal or original action in this Court until such time that either the Department of Corrections remits or plaintiff pays the entire outstanding balance due. MCL 600.2963(8).

Accordingly, monthly payments shall be made to the Department of Corrections in an amount of 50 percent of the deposits made to plaintiff's account until the payments equal the balance due of **\$375**. This amount shall then be remitted to this Court. Again, plaintiff may not file either a new civil appeal or an original action until plaintiff pays the entire outstanding balance due. MCL 600.2963(8).



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

JAN 03 2013

Date

Larry S. Royster  
Chief Clerk