

Court of Appeals, State of Michigan

ORDER

In re Brown

Docket No. **315325**

LC No. **02-184580-FC**

Amy Ronayne Krause, Judge, acting under MCR 7.211(E)(2), orders:


Plaintiff's letter received April 26, 2013 is treated as a motion for reconsideration of this Court's April 19, 2013 order, and the motion is DENIED. The present case initiated by a complaint for superintending control filed by plaintiff in this Court necessarily constitutes a new civil action under MCR 3.301(A)(1)(a) notwithstanding that it relates to an underlying criminal case in the circuit court. Further, MCL 600.2963 plainly applies to any civil action filed by a prisoner under the jurisdiction of the Department of Corrections in a Michigan court, MCL 600.2963(1), not only to cases involving prison conditions. Moreover, reasonably considering the opinion in *Smith v Bennett*, 365 US 708, 709; 81 S Ct 895; 6 L Ed 2d 39 (1961), in its entirety, the holding in *Smith* only applies to a prisoner seeking habeas corpus relief and does not extend to the present superintending control action. Also, *Smith* involved circumstances in which prisoners were denied the ability to pursue habeas corpus relief due to an inability to pay a \$4 filing fee. *Id.*, 711-712. In contrast, plaintiff gives no indication in his request for reconsideration that he is unable to pay the \$107 initial partial filing fee required by this Court's April 19, 2013 order. Indeed, the relevant April 2, 2013 prisoner account statement shows plaintiff as having an average monthly deposit of \$215.63 over a 12-month period and a current account balance of \$227.13. Similarly, the holding in *Lane v Brown*, 372 US 477; 83 S Ct 768; 9 L Ed 2d 892 (1963), regarding the unconstitutionality of a procedure denying appellate review based on a prisoner's inability to pay for a transcript of court proceedings is inapposite to the present circumstances in which plaintiff appears able to pay the required \$107 initial partial filing fee. Plaintiff shall comply with the April 19, 2013 order within 21 days of the date of this order to proceed with this case.



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

MAY 10 2013

Date


Chief Clerk