

Court of Appeals, State of Michigan

ORDER

Darrin Scott Lapine v Bellamy Creek Correctional Facility Warden

Docket No. **332493**

LC No. **00-000000**

Michael J. Talbot, Chief Judge, acting under MCR 7.211(E)(2), orders:

On the Court's own motion, the original complaint is DISMISSED IN PART as to its aspect seeking mandamus relief because plaintiff filed the complaint even though he owes an outstanding balance of \$375 in *Darrin Lapine v Department of Corrections*, Docket Number 324949, a prior case he filed in this Court while a prisoner of the Department of Corrections. MCL 600.2963(8). However, MCL 600.2963(8) cannot constitutionally be applied to bar the habeas corpus aspect of the complaint. *Smith v Bennett*, 365 US 708; 81 S Ct 895; 6 L Ed 2d 39 (1961).

As to the habeas corpus aspect of the complaint the motion to waive fees is DENIED because MCL 600.2963 mandates that a prisoner pursuing a civil action be liable for the filing fees. Within 21 days of the date of this order, plaintiff shall pay to the Clerk's Office the initial partial filing fee of \$5, shall submit a copy of this order with the payment, **and shall refile the pleadings which are being returned with this order.** If plaintiff timely files the partial fee and refiles the pleadings, he may not file another new civil appeal or original action in this Court until either the Department of Corrections remits or he pays the entire outstanding balance due. MCL 600.2963(8). Failure to comply with this order shall result in the original complaint for habeas corpus not being filed and plaintiff not being responsible for paying the filing fee or electronic filing system fee. If plaintiff timely files the partial fee and refiles the pleadings, monthly payments shall be made to the Department in an amount of 50 percent of the deposits made to plaintiff's account until the payments equal the balance due of \$395 for payment of the \$400 total of the \$375 filing fee and \$25 electronic filing system fee. This amount shall then be remitted to this Court. The Clerk's Office shall furnish two copies of this order to plaintiff and return his pleadings with this order.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 25 2016

Date



Chief Clerk