

# Court of Appeals, State of Michigan

## ORDER

**Terah Lee Stamps v Macomb Correctional Facility Warden**

Docket No.    **334483**

LC No.         **2016-002428-AH**

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Michael F. Gadola, Judge, acting under MCR 7.211(E)(2), orders:

Initially, the plain language of MCL 600.2963(8) would bar this case based on the outstanding fee that plaintiff owes in *Terah Lee Stamps v RA Handlon Correctional Facility Warden*, Docket Number 317001. But MCL 600.2963(8) cannot constitutionally be applied to bar the present original action for habeas corpus where it appears manifest that plaintiff is unable to pay that outstanding fee. *Smith v Bennett*, 365 US 708; 81 S Ct 895; 6 L Ed 2d 39 (1961).

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. Plaintiff is not required to pay an initial partial fee. MCL 600.2963(7). However, for this complaint to be filed, **plaintiff shall submit a copy of this order and refile the pleadings within 21 days of the date of this order.** By doing this, plaintiff becomes responsible for paying the \$375 filing fee and the \$25 electronic filing system fee, for a total of \$400, 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). The electronic filing system fee applies to the filing of a civil action even if it is not filed electronically. MCL 600.1986(2). Failure to comply with this order shall result in the complaint not being filed in this Court and plaintiff not being responsible for paying the filing fee or the electronic filing system fee. If plaintiff timely refiles the pleadings, 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 \$400. This amount shall then be remitted to this Court. The Clerk of this Court shall furnish two copies of this order to plaintiff and return plaintiff's pleadings with this order.



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

SEP 22 2016

Date

  
Chief Clerk