

STATE OF MICHIGAN
COURT OF APPEALS

CHESTER P. HAWKINS,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 186649

Ingham Circuit Court

GOVERNOR OF MICHIGAN,

LC No. 94-078871-CZ

Defendant-Appellee.

Before: Michael J. Kelly, P.J., and Wahls and Gage, JJ.

GAGE, J. (dissenting):

I respectfully dissent.

I would affirm Circuit Judge Thomas Brown’s order reinstating plaintiff’s filing fees. Like other states and the federal government, Michigan expends significant sums defending lawsuits filed against it by incarcerated plaintiffs.¹ In response to the rising costs of defending prisoner lawsuits, the U.S. Congress passed the Prison Litigation Reform Act in 1996. 28 USC 1915. Under this legislation, prisoners who file lawsuits in federal court while incarcerated “must now pay the required filing fees and costs. When an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan. Prisoners are no longer entitled to a waiver of fees and costs.” *In re Prison Litigation Reform Act*, 105 F3d 1131 (6 CA, 1997). In our own state, the Legislature responded to the increased costs of prisoner litigation by enacting MCL 600.2963; MSA 27A.2963, which went into effect June 1, 1997. Neither of these statutes applies to the present case, of course, but I believe nonetheless that the circuit court did not err in reinstating plaintiff’s filing fees.

The circuit court initially suspended the filing fee “to ensure [plaintiff] of a timely review of [his] complaint.” The court’s original order stated that plaintiff’s fee “may be reinstated at the conclusion of the case.” When Judge Brown granted defendant’s motion for summary disposition of plaintiff’s complaint, he also reinstated plaintiff’s fee. Plaintiff appealed both actions. Pursuant to an order of this Court affirming the grant of summary disposition to defendant but vacating the reinstatement of plaintiff’s filing fee, and consistent with *Martin v Dep’t of Corrections (On Remand)*, 201 Mich App 331; 505

NW2d 915 (1993), Judge Brown had plaintiff transported back to his courtroom from Lakeland Correctional Facility for an evidentiary hearing on plaintiff's indigency status. After finding that plaintiff was not indigent, Judge Brown again reinstated the \$62 filing fee.

Under the provisions of MCR 2.002(G), the circuit court is allowed to reinstate the suspended filing fees of an indigent party "when the reason for the waiver or suspension no longer exists." The circuit court suspended plaintiff's filing fees to allow him access to the court to have his complaint timely reviewed. Once that reason no longer existed, because plaintiff's complaint was dismissed by grant of summary disposition to the defendant, the court rule allowed the reinstatement of the filing fee.

Moreover, I believe that Judge Brown's holding that plaintiff was not indigent, for purposes of reinstating the filing fee, was not erroneous. As the record indicates, plaintiff's prison account statements consistently showed a balance of zero, although plaintiff regularly received \$7 monthly "loans" from the Department of Corrections. Plaintiff's "room, board, medical expenses, dental expenses, food, so forth" were all provided for him by the state, as Judge Brown noted, and there was "no evidence that the Corrections Commission is interested in repayment." Plaintiff had the option of saving money from the \$7 monthly deposits to his prison account to pay his own filing fees, either before initiating the present civil action or after the reinstatement of the fees at the conclusion of the case.

I would affirm.

/s/ Hilda R. Gage

¹ For example, one writer has estimated that prisoner lawsuits accounted for fifteen percent of all civil suits filed in the federal courts in 1993. The writer believes that the burden on state courts is even higher. Dunn, *Flood of Prisoner Rights Suits Brings Effort to Limit Filings*, New York Times, March 21, 1994, at A1, cited in DeWolf, *Protecting the Courts from the Barrage of Frivolous Prisoner Litigation: A Look at Judicial Remedies and Ohio's Proposed Legislative Remedy*, 57 Ohio St L J 257 (1996).