

STATE OF MICHIGAN
COURT OF APPEALS

GARY M. NORTINGTON,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF
CORRECTIONS, RUM DEFOREST, FRANK
ELO, ALLEN HAIGH, KAREN HEARD, and
SHERM WILLIAMS,

Defendants-Appellees.

UNPUBLISHED

October 22, 2002

No. 231449

Lenawee Circuit Court

LC No. 00-000221-CZ

Before: Saad, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order dismissing his lawsuit. We affirm.

Plaintiff challenges the dismissal of his lawsuit. We review a trial court's decision to dismiss a lawsuit for an abuse of discretion. *Nippa v Botsford Gen Hosp*, 251 Mich App 664, 667; ___ NW2d ___ (2002). However, we review de novo issues of law. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

On September 27, 2000, the Ingham Circuit Court granted a defense motion for a change of venue, MCR 2.223, and ordered plaintiff's lawsuit transferred to Lenawee Circuit Court. MCR 2.223(B)(1) states that a plaintiff must pay the statutory filing fee to the court in which the action is transferred. More importantly, MCR 2.223(B)(2) states as follows:

After transfer, no further proceedings may be had in the action until the costs and expenses allowed under this rule have been paid. If they are not paid within 56 days from the date of the order changing venue, the action must be dismissed by the court to which it was transferred.

Thus, plaintiff had until November 22, 2000, to pay the statutory filing fee to the Lenawee Circuit Court. As of November 28, 2000, plaintiff had not paid the statutory filing fee, nor had he moved in that court to have the filing fee waived—as he had done in the Ingham Circuit Court. Further, plaintiff failed to take action regarding the filing fee even though the Ingham Circuit Court specifically advised plaintiff “to abide by all applicable statutes and court rules, including MCR 2.223(B) regarding the statutory filing fee for the Court in Lenawee County.”

Accordingly, the Lenawee Circuit Court was required by MCR 2.223(B)(2) to dismiss plaintiff's lawsuit on November 28, 2000. Consequently, the trial court's decision was not an abuse of discretion. *Nippa, supra*.

Plaintiff challenges this ruling on several grounds. For example, plaintiff contends that dismissal was improper while there was a timely motion for reconsideration pending. However, a motion for reconsideration must be filed within fourteen days of the underlying order. MCR 2.119(F)(1). Thus, plaintiff had to submit his motion for reconsideration within fourteen days of September 27, 2000. Plaintiff did not file his motion for reconsideration until October 27, 2000.¹ The "court rules do not provide for 'delayed' motions for rehearing." See *Ramsey v City of Pontiac*, 164 Mich App 527, 538; 417 NW2d 489 (1987). Because motions for reconsideration "must" be filed within fourteen days of the entry of the order, MCR 2.119(F)(1), plaintiff's motion for reconsideration was not timely, nor was it ever pending. Accordingly, plaintiff's contention is without merit.

Plaintiff also contends that the trial court improperly dismissed the case because it had not yet ruled on plaintiff's motion to waive fees and costs. However, plaintiff did not file a motion to waive fees and costs in Lenawee Circuit Court before the trial court entered the order dismissing the case. Therefore, this contention is also without merit.

Next, plaintiff contends that the trial court erred in dismissing the case because it failed to notify him of the case number, the presiding judge, or how to pay the fees. Plaintiff cites no authority establishing that the Ingham Circuit Court was required to provide plaintiff this information. "Insufficiently briefed issues are deemed abandoned on appeal." *Etefia v Credit Technologies, Inc*, 245 Mich App 466; 471; 628 NW2d 577 (2001). Regardless, we note that the Ingham Circuit Court order changing venue indicates the new case number in Lenawee Circuit Court and the name of the new presiding judge, and expressly advises plaintiff to comply with MCR 2.223(B). Accordingly, we reject plaintiff's assertion that the trial court lacked jurisdiction to dismiss his lawsuit on this basis.

Plaintiff also raises a contractual issue, asserting that the United States and Michigan Constitutions are contracts between judges and citizens. However, the principles cited by plaintiff are not relevant to either his case or the trial courts' conduct, and fall well short of establishing a contractual relationship between judges and citizens. Similarly, plaintiff's reference to governmental immunity is misplaced. As noted above, the trial court dismissed this case because of plaintiff's failure to comply with MCR 2.223(B)(2), not because of governmental immunity. Along the same lines, plaintiff contends that his complaint states a claim on which relief can be granted. Plaintiff confuses the dismissal of the case under MCR 2.223(B)(2) with the dismissal of a claim under MCR 2.116(C)(8). Again, the trial court dismissed the case under MCR 2.223(B)(2) because plaintiff failed to pay the statutory filing fee.

¹ Plaintiff notes that he submitted his motion for reconsideration to prison officials on October 3, 2000. However, in *Walker-Bey v Dep't of Corrections*, 222 Mich App 605, 608-610; 564 NW2d 171 (1997), we declined to adopt the federal "prison mailbox rule," which allows a filing to occur where a pro se prisoner merely submits his or her documents to a prison official for forwarding to the court clerk. Accordingly, plaintiff's submission of his materials to prison officials is not sufficient to render his motion for reconsideration timely.

Even if plaintiff's complaint stated a claim on which relief can be granted, the trial court was required by MCR 2.223(B)(2) to dismiss the case.

Next, plaintiff contends that the trial court abused its discretion in dismissing the case because he was in imminent physical danger. MCR 2.223(B)(2) specifically provides that dismissal is a mandatory sanction for failure to pay the statutory filing fee after the case has been transferred. Thus, plaintiff's allegation that he was in imminent physical danger does not change the propriety of this dismissal.

Plaintiff also argues that the order dismissing his case is null and void because the trial courts committed fraud. Plaintiff cites no relevant law in support of these arguments. Therefore, plaintiff has abandoned this issue. *Etefia, supra* at 471.

Next, plaintiff challenges the dismissal by contending that MCR 2.223(B)(2) is unconstitutional because it allows an indigent plaintiff's case to be dismissed for failure to pay filing fees. Although plaintiff cites several constitutional amendments, he does not argue why or how MCR 2.223(B)(2) violates these constitutional provisions. Therefore, we find this issue abandoned. *Etefia, supra* at 471. Regardless, we note that both MCL 600.2963 and MCR 2.002 provide an exception to MCR 2.223(B)(2) by allowing indigent prisoners to have court fees waived. However, the prisoner must establish that he or she is indigent. Here, plaintiff—despite being advised to do so by the Ingham Circuit Court—simply neglected to establish to the Lenawee Circuit Court that he was indigent. In other words, it was plaintiff's neglect that led to the dismissal. Therefore, we are not persuaded that, as applied to plaintiff's circumstances, MCR 2.223(B)(2) is unconstitutional.

Finally, plaintiff contends that the trial court abused its discretion in failing to grant his motion for relief from the order dismissing the case. MCR 7.208(A) states as follows: "After a claim of appeal is filed or leave to appeal is granted, the trial court or tribunal may not set aside or amend the judgment or order appealed from except by order of the Court of Appeals, by stipulation of the parties, or as otherwise provided by law." In fact, "[f]iling of a claim of appeal divests the circuit court of its jurisdiction to amend its final orders." *Wilson v General Motors Corp*, 183 Mich App 21, 41; 454 NW2d 405 (1990). Here, because plaintiff filed his claim of appeal before he filed his motion for relief from the order dismissing the case, the trial court lacked jurisdiction to grant relief from the order. MCR 7.208(A). Therefore, the trial court did not err in failing to rule on plaintiff's motion for relief from judgment.

Affirmed.

/s/ Henry William Saad
/s/ Michael R. Smolenski
/s/ Donald S. Owens