IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Michael Ward v Bellamy Creek Correctional Facility Warden**
Docket No. **318723**
L.C. No. **13-017546-AH**

Donald S. Owens, Judge, acting under MCR 7.211(E)(2), orders:

The motion to waive fees pursuant to MCR 7.202(4) and MCR 7.206(D)(1)(d) is DENIED because MCL 600.2963 mandates that a prisoner pursuing a civil action be liable for the filing fees. It is recognized that the plain language of MCL 600.2963(8) would bar plaintiff from proceeding with the present original complaint for habeas corpus based on the outstanding fees he owes to this Court in prior cases he has filed while a prisoner of the Department of Corrections. However, application of MCL 600.2963(8) to bar plaintiff from proceeding with the present original complaint for habeas corpus would violate the Equal Protection Clause of the Fourteenth Amendment by allowing a "financial consideration" or "financial hurdle" to bar consideration of the merits of the complaint. *Smith v Bennett*, 365 US 708; 81 S Ct 895; 6 L Ed 2d 39 (1961).

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 certification of this order**. By doing this, plaintiff becomes responsible for paying the $375 filing fee 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). 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. 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 **$375**. This amount shall then be remitted to this Court. Again, plaintiff may not file either a new civil appeal or an original action until plaintiff pays the entire outstanding balance due. MCL 600.2963(8).

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

NOV 0 1 2013
Date

Jerome W. Zimmer Jr.
Chief Clerk