

STATE OF MICHIGAN  
COURT OF APPEALS

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TIMOTHY PAUL KEENAN,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF  
CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED

January 28, 2003

No. 234106

Ingham Circuit Court

LC No. 00-092067-CZ

Before: Neff, P.J., and Hoekstra and O’Connell, JJ.

PER CURIAM.

Plaintiff Timothy Paul Keenan appeals the trial court’s grant of summary disposition for defendant. We affirm.

Plaintiff’s first issue on appeal is that the trial court was biased against him.<sup>1</sup> We disagree. In reviewing a motion to disqualify a judge, the trial court’s findings of fact are reviewed for an abuse of discretion, and the applicability of the facts to relevant law is reviewed de novo. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 596; 640 NW2d 321 (2001).

Plaintiff failed to follow the procedures of MCR 2.003 and, therefore, waived any claim of disqualification. Even if we were to address the merits of plaintiff’s allegations, the trial court’s actions do not rise to the level of actual bias or the appearance of impropriety. Plaintiff alleges that disqualification was warranted because filing and service fees were imposed, and because his request for substitute service was denied. Judicial decisions—even if erroneous—almost never constitute a valid basis for a motion alleging bias. *Armstrong, supra* at 597. Plaintiff has offered no evidence of bias or the appearance of bias against him. *Cain v Dep’t of Corrections*, 451 Mich 470, 494; 548 NW2d 210 (1996); *Ireland v Smith*, 214 Mich App 235, 250; 542 NW2d 344 (1995), mod 451 Mich 457 (1996).

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<sup>1</sup> This Court denied plaintiff’s request to consolidate an untimely appeal for case number 00-17694-CM with a timely appeal for case number 00-92067-CZ; therefore, only issues pertaining to 00-92067-CZ are properly before this Court. See MCR 7.204; *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

Plaintiff's second issue on appeal is that the trial court erred in imposing an initial partial filing fee of \$9.05 under MCL 600.2963. We disagree. Questions of law, including statutory interpretation, are reviewed de novo, *Armstrong, supra* at 582, while the court's factual findings are reviewed for clear error. *Townsend v Brown Corp of Ionia, Inc*, 206 Mich App 257, 263; 521 NW2d 16 (1994).

When there is no determination that a prisoner will forever be unable to pay his filing fee obligation, it is not unreasonable for the court to require that money be occasionally withdrawn from his prison account to pay the fee. *Lewis v Dep't of Corrections*, 232 Mich App 575, 583; 591 NW2d 379 (1998). In *Lewis, id.* at 582-583, this Court found no error in the trial court's reinstatement of the petitioner prisoner's obligation to pay a filing fee, even though he had a spendable balance of \$0 in his prisoner account. The Court noted that the prisoner had spent \$124 at the prison store in six months, thereby indicating he was not indigent. *Id.* at 584.

In the instant case, plaintiff's account statement indicated he spent money on a number of occasions for items other than costs related to any type of legal action. Plaintiff's litigious history provided him with knowledge that court costs and fees are required to bring a claim. Plaintiff should not be allowed to circumvent the filing fee requirements by purchasing other items before filing his claim, and then alleging that he is indigent. "[T]hose who spend valuable judicial resources should be required to 'take economic responsibility for their decisions to sue.'" *Id.* at 585 (citation omitted). We find no error in the trial court's determination that plaintiff was required to pay a partial filing fee.

Plaintiff's third issue on appeal is that the trial court misinterpreted MCL 600.2963 and improperly required him to pay motion fees. We disagree.

MCR 2.002(D) states, "If a party shows by ex parte affidavit or otherwise that he or she is unable because of indigency to pay fees and costs, the court shall order those fees and costs either waived or suspended until the conclusion of the litigation." The trial court had access to plaintiff's prisoner account statements, see *Lewis, supra* at 581-583, and these statements indicated that plaintiff was not indigent. Fees were properly imposed on plaintiff because the evidence contradicted plaintiff's claim that he was indigent. See *Hadley v Ramah*, 134 Mich App 380, 389-390; 351 NW2d 305 (1984) (court may conduct evidentiary hearing or utilize other verification procedure to determine financial status of indigent requesting fee waiver).

Plaintiff's fourth issue on appeal is that the trial court erred in not entering default against two defendants who were prison employees. We disagree.

Service of a summons is a necessary part of service of process. *Holliday v Townley*, 189 Mich App 424, 426; 473 NW2d 733 (1991). It is the summons that informs the defendant that an action has been commenced against him and of his rights and duties in connection with the action, such as the time limits for responding to the complaint. *Id.* MCR 2.105(J)(3) states, "An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service." MCR 2.105(A)(2) provides that process may be served on a resident or nonresident individual by:

sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).

Neither of the two employees signed the return receipt provided as proof of service by plaintiff; therefore, the employees were not properly served.

Importantly, the defects were not in plaintiff's manner of service, but in a complete failure to serve the parties. Because a complete failure of service, e.g., failure to serve the summons with the complaint within the time for service, warrants dismissal for improper service of process, *In re Gordon Estate*, 222 Mich App 148, 158; 564 NW2d 497 (1997), the trial court properly denied plaintiff's motion for default against the prison employees.

Plaintiff's fifth issue on appeal is that summary disposition was improperly granted. We disagree. This Court reviews the grant of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The Court must review the entire record to determine if the defendant was entitled to summary disposition. *Id.*

Plaintiff alleges that his access to the courts, a constitutional right, was violated by defendant's delay in disbursing a check for court fees. However, plaintiff did not present evidence from which any reasonable inference could be drawn supporting his claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 455, n 2; 597 NW2d 28 (1999); *Schram v Chambers*, 79 Mich App 248, 253; 261 NW2d 277 (1977). Plaintiff's allegation that his rights were violated because defendant took seven calendar days to disburse a check for plaintiff's court costs is without merit. Defendant's statewide policy is to allow ten working days to disburse checks. Mere allegations by plaintiff do not preclude summary disposition when reasonable minds could not have honestly reached different conclusions. *Smith, supra; Vermilya v Dunham*, 195 Mich App 79, 83; 489 NW2d 496 (1992). Plaintiff had twenty-one days to file the fees; he waited until four days before the deadline to request that the fees be sent. While the trial court did not state the specific rule under which it was granting summary disposition, plaintiff's allegations do not give rise to any enforceable claim.

Plaintiff's sixth issue on appeal is also that summary disposition was improperly granted in another claim that plaintiff filed. We disagree. Plaintiff had earlier filed a motion with this Court to consolidate two appeals—one timely filed and one that had not been timely filed. This Court denied the motion because plaintiff attempted to avoid paying the appropriate filing fees and sought to circumvent this Court's procedures to rectify his delay in filing a timely appeal. See Court of Claims Docket No. 00-17694-CM. Plaintiff's request was denied; however, plaintiff raises this issue in contravention of this Court's previous order.

Plaintiff may not ignore this Court's prior order and seek a review of his claim through his appeal of a separate case.

Affirmed.

/s/ Janet T. Neff  
/s/ Joel P. Hoekstra  
/s/ Peter D. O'Connell