

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

TOMMY RADFORD

PLAINTIFF

v.

Civil No. 1:08-cv-1008

CAPTAIN DAVID NORWOOD;
JOE STRICKLAND;
TAMMI POOLE;
CHRIS GILL;
MARK SPEER;
DETECTIVE FRANKLIN;
GLENN LAMPKINS;
JAKE McCLANE;
JUSTIN SMITH;
JAILER BAKER;
BOBBY RAY SMITH;
JERRY THOMAS; and
LARRY BRAZZELLE

DEFENDANTS

ORDER

Now before the Court is Plaintiff's Motion for Order to Stop Payments (Doc. 45). Plaintiff states he was released from the Arkansas Department of Corrections in October 2006, and returned in July of 2008. At the time he returned, Plaintiff was still charged federal filing fees on a remaining balance he carried over from his previous incarceration. Plaintiff had filed several civil Complaints under 42 U.S.C. § 1983 during his previous incarceration and those Complaints were then dismissed for failure to state a claim. Plaintiff now seeks to have the Court order the filing fees for these cases no longer be assessed as these cases were dismissed.

The Prison Litigation Reform Act ("PLRA") provides that "if a prisoner *brings* a civil action

or files an appeal in forma pauperis, the prisoner *shall* be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915 (b)(1) (emphasis supplied). Similarly, the Eighth Circuit has held “the PLRA makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal.” *In re Tyler*, 110 F.3d 528, 529 (8th Cir. 1997). Clearly, the intent of the PLRA is for the obligation for payment to attach at the time the case is filed, regardless of its later disposition. *See* 28 U.S.C. § 1915 (e) (2) (i) (“Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal is frivolous or malicious.”); *see also, Williams v. Roberts*, 116 F.3d 1126 (5th Cir. 1997) (holding the filing fee must be paid, even when the case is dismissed for lack of jurisdiction).

Thus, under the PLRA, Plaintiff incurred the obligation for the filing fees at the time he filed his previous actions. Plaintiff’s Motion to Stop Payments (Doc. 45) is DENIED.

IT IS SO ORDERED this 4th day of September 2008.

/s/ Barry A. Bryant
HONORABLE BARRY A. BRYANT
UNITED STATES MAGISTRATE JUDGE