LANE v. Philbin et al Doc. 49

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA VALDOSTA DIVISION

RODNEY MANYON LANE,

.

Plaintiff

:

VS.

:

TED PHILBIN, *et al.*, : NO. 7:13-cv-36 (HL)

Defendants : **ORDER**

Plaintiff **RODNEY MANYON LANE**, an inmate at Ware State Prison, filed the instant action under 42 U.S.C. § 1983. On February 25, 2014, this Court adopted the Magistrate Judge's report (Doc. 39) recommending that Defendants' motion to dismiss this lawsuit be granted and that Plaintiff's motion for a temporary restraining order and preliminary injunction be denied (Doc. 41). Plaintiff has now filed a notice of appeal (Doc. 43), along with a request to proceed *in forma pauperis* ("IFP") on appeal (Doc. 48) and a motion for appointment of counsel (Doc. 47).

In the Court's best judgment, an appeal from its Order cannot be taken in good faith. 28 U.S.C. § 1915(a)(3). Accordingly, having been carefully considered, Plaintiff's motion to proceed IFP on appeal is hereby **DENIED**.

If Plaintiff wishes to proceed with his appeal, he must pay the entire \$505 appellate filing fee. Because Plaintiff has stated that he cannot pay the \$505 immediately, he must pay using the partial payment plan described under 28 U.S.C. § 1915(b). The prison account custodian shall cause to be remitted to the Clerk of this Court monthly payments of 20% of the preceding month's income credited to Plaintiff's account (to the extent the account balance exceeds \$10) until the

\$505 appellate filing fee has been paid in full. Checks should be made payable to "Clerk, U.S.

District Court." The Clerk of Court is directed to send a copy of this Order to the business

manager at Plaintiff's place of incarceration.

Regarding Plaintiff's motion for appointment of counsel, in deciding whether legal counsel

should be provided, the Court typically considers, among other factors, the merits of the Plaintiff's

claim and the complexity of the issues presented. Holt v. Ford, 682 F.2d 850, 853 (11th Cir.

1989). Based upon the lack of merit in Plaintiff's appeal, his motion for counsel is **DENIED**.

Any further requests to proceed IFP or to have counsel appointed, should be directed to the

United States Court of Appeals for the Eleventh Circuit.

SO ORDERED, this 11th day of April, 2014.

s/ Hugh Lawson

HUGH LAWSON

UNITED STATES DISTRICT JUDGE

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