

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

KERWIN M. WARD,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 1:10cv0429 RBC
)	
JOSHUA FRANCISCY,)	
)	
Defendant.)	

OPINION AND ORDER

When Plaintiff Kerwin Ward filed this action, he was a prisoner confined at the Westville Correctional Facility. The court granted Ward leave to proceed without full prepayment of fees and costs, which meant that he had to pay the full filing fee in installments from his prison trust account. 28 U.S.C. § 1915(b). Ward has not yet paid the full filing fee in this action, but has now been released from custody and is no longer confined in any jail or penal facility.

Where a prisoner is released before paying the filing fee in full, he must pay any initial partial filing fee that is assessed, and any installment payments justified by the income to his prisoner trust account. *Robbins v. Switzer*, 104 F.3d at 897-8. But after his release, Section 1915(b)(4) permits a former prisoner who has paid the initial partial filing fee assessed under Section 1915(b)(1) and any installment payments due under Section 1915(b)(2), to be excused from further payments on the filing fee if he is destitute. *Id.* at 898.

Ward has made all payments required under Section 1915(b)(1) and Section 1915(b)(2) and has filed a petition to proceed *in forma pauperis* as a nonprisoner. Review of his petition establishes that he is has not been employed since his release from custody and that he has no assets. Accordingly, pursuant to 28 U.S.C. § 1915(b)(4), Ward is currently entitled to proceed without making further payments on the filing fee. “Unsuccessful litigants are liable for fees and costs and must pay when they are able.” *Robbins v. Switzer*, 104 F.3d at 898, *citing McGill v.*

Faulkner, 18 F.3d 456 (7th Cir. 1994). So, if Ward prevails in this case, or he is ultimately unsuccessful but his financial situation has improved, he may still be required to make further payments toward fees and costs.

For the foregoing reasons, the court GRANTS the Plaintiff's motion to proceed *in forma pauperis* (DE 41) and DISCHARGES the plaintiff from making any further installment payments toward the filing fee.

SO ORDERED.

ENTERED: July 11, 2011

s/Roger B. Cosby
Roger Cosby
United States Magistrate Judge