

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION**

FREDERICK BANKS

PLAINTIFF

v.

CIVIL ACTION NO. 5:17-CV-P109-GNS

SOO SUNG et al.

DEFENDANTS

MEMORANDUM OPINION

Plaintiff, Frederick Banks, initiated this action by filing a complaint and a prisoner application to proceed without prepayment of fees. The Court determined that Plaintiff was barred from proceeding without paying the filing fee under 28 U.S.C. § 1915(a) unless he could show that he is in imminent danger of serious physical injury. Therefore, the Court ordered Plaintiff to pay the filing fee within 30 days. He was warned that failure to comply would result in dismissal of this action and continued responsibility to pay the filing fee.

More than 30 days have passed since the Court entered its Order, and Plaintiff has not paid the filing fee. Instead, he filed a “Cheque” (DN 5), which was nothing more than his handwriting on a piece of paper in the shape and style of a personal check. Having failed to pay the \$400 filing fee as ordered by the Court, the Court will, by separate Order, dismiss this action pursuant to Fed. R. Civ. P. 41(b) for failure to comply with a prior Order of this Court and failure to prosecute.

Plaintiff remains obligated to pay the filing fee in full notwithstanding his failure to comply with the prior Order of this Court. *McGore v. Wrigglesworth*, 114 F.3d 601, 605 (6th Cir. 1997) (“We conclude that by *filing* the complaint or notice of appeal, the prisoner waives any objection to the fee assessment by the district court.”) (emphasis added), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199 (2007).

Accordingly, **the prior Order (DN 4) obligating Plaintiff to pay the \$400.00 filing fee in this action remains in full effect.**

IT IS THEREFORE ORDERED that the Northeast Ohio Correctional Center shall forward \$400.00 from Plaintiff's inmate account to the Clerk for full payment of the filing fee. The payment shall be made payable to "Clerk, U.S. District Court" and sent to the following address:

Office of the Clerk
United States District Court
Western District of Kentucky
106 Gene Snyder U.S. Courthouse
601 W. Broadway
Louisville, Kentucky 40202-2249

Date: October 11, 2017



**Greg N. Stivers, Judge
United States District Court**

cc: Plaintiff, *pro se*
NEOCC, attn. inmate accts. #05711068, 2240 Hubbard Rd., Youngstown, OH 44505
4416.009