

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN ALLEN MCGEE #10511-040,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 1:08-CV-154

HONORABLE PAUL L. MALONEY

Magistrate Judge Joseph G. Scoville

OPINION and ORDER

Denying the Plaintiff's Motion for Declaratory Judgment

The Magistrate Judge issued a Report and Recommendation (“R&R”) in June 2008 (Doc 56), and plaintiff Steven Allen McGee (“McGee”) filed objections (Doc 64). McGee attempted to appeal other interlocutory orders and rulings, but the U.S. Court of Appeals for the Sixth Circuit (“the Circuit”) dismissed two appeals in August 2008 and the other appeal in October 2008 (Docs 81 and 84). In March 2009, this court overruled McGee’s objections and adopted the R&R. The court dismissed his claims against non-Michigan-resident Sixth Circuit employees for lack of personal jurisdiction and improper venue, dismissed his remaining federal claims as frivolous and failing to state a claim on which relief could be granted, and declined supplemental jurisdiction over any state-law claims. The court also issued a third “strike” under 18 U.S.C. § 1915(g), and determined that a certificate of appealability was not warranted.. *See McGee v. US*, No. 1:2008-cv-154 Docs. 88 & 89, 2009 WL 909589 (W.D. Mich. Mar. 31, 2009) (Maloney, C.J.). On May 5, 2009, McGee filed a

notice of appeal, *see* Doc. 96, and on May 19, 2009 the Sixth Circuit assigned Case Number 09-1617.

Also in May 2009, this court denied McGee's motion to vacate and other miscellaneous motions filed by McGee. *See McGee v. US*, No. 1:2008-cv-154 Docs. 90 & 97, 2009 WL _____ (W.D. Mich. May 11, 2009) (Maloney, C.J.) (not yet available on WestLaw).

In July 2009, McGee filed a motion for *in forma pauperis* status on appeal (Doc 101), and the Magistrate Judge directed him to pay an initial partial filing fee of \$28.71 within thirty days, followed by installment payments until the full appeal fee was paid (Doc 102). On August 3, 2009, McGee filed a motion for declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 (Doc 104). McGee sought a declaration that 28 U.S.C. § 1915(b)(1) and § 1915(b)(2) are unconstitutional as applied to the instant case, specifically by

requiring the collection of filing fees from his inmate trust account, in violating [his] Fourteenth Amendment right to the equal privileges [sic] and protection of the laws, his Sixth Amendment right of access to the federal courts, as well as the Plaintiff's Seventh Amendment right to a jury trial, in preventing Plaintiff McGee from prosecuting a civil action in accordance with the Federal Rules of Civil Procedure.

Doc 104 at 1. McGee also sought a declaration that this court violated his rights under 28 U.S.C. § 1915(b)(4) by requiring him to the full appeal fee (albeit through periodic installment payments) to appeal the court's dismissal of his complaint. *Id.* McGee concluded his "motion for declaratory judgment" as follows: "In support, Plaintiff incorporates by reference as though fully stated herein, his attached Motion to Chief District [Judge] Maloney to reconsider Magistrate's In Forma Pauperis Order of July 2009." Doc 104 at 1.

This court considered the attached appeal and affirmed the Magistrate's IFP/Filing-Fee order on February 8, 2010. *See McGee v. US*, No. 1:2008-cv-154 Doc 106, 2010 WL 520708 (W.D. Mich. Feb.8, 2010) (Maloney, C.J.). That opinion addressed all the issues and arguments mentioned in McGee's "motion for declaratory judgment", rejecting each of them as either meritless or not properly

before the court. The concluding “Order” section of said opinion, however, neglected to list the motion for declaratory judgment as denied.

ORDER

Plaintiff McGee’s “motion for declaratory judgment” [doc. #104] is **DENIED** for the reasons stated in *McGee v. US*, No. 1:2008-cv-154 Doc 106, 2010 WL 520708 (W.D. Mich. Feb.8, 2010) (Maloney, C.J.).

IT IS SO ORDERED on this 31st day of March 2010.

/s/ Paul L. Maloney _____
Honorable Paul L. Maloney
Chief United States District Judge