

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

David R. Carlson,

Plaintiff,

v.

Civil No. 13-241 (JNE/JJG)
ORDER

D.O.C. Prison Warden Becky Dooly, Sgt.
Johnson, and Sgt. Holt,

Defendants.

On April 24, 2013, the Court adopted a Report and Recommendation, dismissed Plaintiff's Complaint, and entered judgment. Plaintiff filed a notice of appeal and an application to proceed in forma pauperis (IFP) on appeal. On June 27, 2013, the Court granted Plaintiff's motion to proceed IFP on appeal. On June 28, 2013, the Eighth Circuit Court of Appeals remanded the case for calculation and collection of appellate filing fees pursuant to *Henderson v. Norris*, 129 F.3d 481 (8th Cir. 1997) (per curiam).

Plaintiff is incarcerated at the Minnesota Correctional Facility-Moose Lake. To qualify for IFP status on appeal, a prisoner who appeals from a judgment in a civil action must submit information that demonstrates the prisoner's inability to pay, or give security for, the appellate filing fees. 28 U.S.C. § 1915(a)(1) (2000). The prisoner must also submit a certified copy of the trust fund account statement for the prisoner for the six-month period immediately preceding the filing of the notice of appeal. *Id.* § 1915(a)(2). Even if the prisoner obtains IFP status on appeal, the prisoner is liable for payment in full of the \$455 appellate filing fees without regard to the outcome of the appeal. *Id.* § 1915(b)(1); *Henderson*, 129 F.3d at 484. By filing a notice of appeal, the prisoner consents to the deduction of an initial partial appellate filing fee and the remaining installments from his prison account by prison officials. *Henderson*, 129 F.3d at 484.

Even if the prisoner is financially eligible to proceed IFP on appeal, the prisoner may not appeal IFP if the district court “certifies in writing that [the appeal] is not taken in good faith.” 28 U.S.C. § 1915(a)(3).

The Court has already found that, based on the information submitted by Plaintiff, he is financially eligible for IFP status on appeal. The Court also declined to certify that Plaintiff’s appeal was not taken in good faith. Plaintiff’s initial partial appellate filing fee is \$12.00.¹ *See id.* § 1915(b)(1); *Henderson*, 129 F.3d at 485. The Clerk of Court shall (1) notify the prison officials at the institution where Plaintiff is incarcerated to pay Plaintiff’s \$12.00 initial partial appellate filing fee from Plaintiff’s account; (2) notify the prison officials to pay the remaining balance of Plaintiff’s appellate filing fees, \$443.00, from Plaintiff’s account in the manner prescribed by 28 U.S.C. § 1915(b)(2); and (3) send a copy of this Order to Plaintiff and to the prison officials. *See Henderson*, 129 F.3d at 485.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Plaintiff is assessed the \$455 appellate filing fees.
2. The prison officials at the institution where Plaintiff is incarcerated shall pay the \$12.00 initial partial appellate filing fee from Plaintiff’s account to the Clerk of Court.
3. The prison officials at the institution where Plaintiff is incarcerated shall pay the remaining balance of his appellate filing fees, \$443.00, from his account to the Clerk of Court in the manner prescribed by 28 U.S.C. § 1915(b)(2).
4. Plaintiff’s application to proceed IFP on appeal [Docket No. 15] is GRANTED.

¹ The Certificate of Authorized Prison Official that Plaintiff submitted in support of his application to proceed IFP on appeal indicates that the average monthly deposits to Plaintiff’s account was \$60.00 and that the average monthly balance in his account was \$20.35. The initial partial appellate filing fee is \$12.00 ($\$60.00 \times 20\% = \12.00). 28 U.S.C. § 1915(b)(1).

5. The Clerk of Court shall send copies of this Order to Plaintiff, to the prison officials at the institution where Plaintiff is incarcerated, and to the United States Court of Appeals for the Eighth Circuit.

Dated: July 1, 2013

s/Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge