Avila v. Bellefy Doc. 83

UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

Adolfo Gutierrez Avila, Jr.,

Case No. 22-CV-0180 (SRN/DTS)

ORDER GRANTING APPLICATION

Plaintiff,

v.

Ryan Bellefy, Being sued in his individual capacity,

TO PROCEED IN FORMA PAUPERIS

ON APPEAL

Defendant.

SUSAN RICHARD NELSON, United States District Judge

Plaintiff Adolfo Gutierrez Avila, Jr., has applied for *in forma pauperis* ("IFP") status on appeal. *See* Doc. Nos. 78 & 79. Avila was found to qualify financially for IFP status upon initiating this action, *see* Doc. No. 9, and therefore qualifies for IFP status on appeal with no further authorization of the Court required, *see* Fed. R. App. P. 24(a)(3). Nevertheless, to make clear that Avila may proceed IFP on appeal, the appellate IFP application will be granted.

That said, because Avila is a prisoner, *see* 28 U.S.C. § 1915(h), the IFP application is governed by 28 U.S.C. § 1915(b), which requires that prisoners seeking IFP status pay an initial partial filing fee upon initiating an appeal. The initial partial filing fee owed by the prisoner-litigant is twenty percent of the greater of the average monthly deposits to the plaintiff's facility trust account or the average balance in the plaintiff's account for the sixmonth period immediately preceding the filing of the appeal. *See* 28 U.S.C. § 1915(b)(1).

The Court has calculated the initial partial filing fee owed on appeal from the facility trust account submitted by Avila, *see* Doc. No. 78 at 6, and finds that Avila must submit an initial partial filing fee of \$40.87. That amount is due and payable immediately. The entire remaining balance of the \$605.00 statutory filing fee will have to be paid in later installments. Officials at the facility where Avila is confined will be notified of this requirement and will be authorized to withdraw funds from Avila's facility trust account and remit those funds to the Court, consistent with § 1915(b).

CONCLUSION

Based on the submissions and the entire file and proceedings herein, IT IS

HEREBY ORDERED THAT:

- 1. The application to proceed *in forma pauperis* on appeal of plaintiff Adolfo Gutierrez Avila, Jr. [Doc. Nos. 78 & 79] is **GRANTED**.
- 2. Avila must pay an initial partial filing fee of at least \$40.87 within 21 days of the date of this order.
- 3. Avila must pay the remainder of the unpaid balance (\$564.13) of the statutory filing fee for this action in the manner prescribed by 28 U.S.C. § 1915(b)(2), and the Clerk

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¹ Avila's trust account statement shows that the amount of his average monthly deposits during the preceding six-month period was \$204.35, while his average balance during the same period was \$33.57. *See* Docket No. 78 at 6. Because the deposits amount exceeds the balance amount, Avila's initial partial filing fee in this case, under the formula prescribed by 28 U.S.C. § 1915(b)(1), will be twenty percent of the average deposits amount, or \$40.87.

of Court shall provide notice of this requirement to the authorities at the institution where Avila is confined.

Dated: November 26, 2024

s/Susan Richard Nelson SUSAN RICHARD NELSON United States District Judge