

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

RANDY LAMONT McKELLAR,)	
)	
Plaintiff,)	
)	
v.)	No. 1:11CV117 HEA
)	
CAPE GIRARDEAU COUNTY,)	
)	
Defendant.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Randy Lamont McKellar (registration no. 1056172), an inmate at South Central Correctional Center, for leave to commence this action without payment of the required filing fee. The Court finds that plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$20.03. Additionally, the Court has reviewed the complaint and finds that subject matter jurisdiction is lacking.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner’s account, or (2) the

average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$100.17, and an average monthly balance of \$17.05. Plaintiff has insufficient funds to pay the entire filing fee. Accordingly, the Court will assess an initial partial filing fee of \$20.03, which is 20 percent of plaintiff's average monthly deposit.

The Complaint

This is a suit for declaratory judgment. Plaintiff brings this action under the Missouri Sunshine Law, Mo. Rev. Stat. § 610.010-030. Plaintiff alleges that he requested guilty plea transcripts from Cape Girardeau County and the Circuit Court for Cape Girardeau County but that his requests were denied. Plaintiff seeks a judgment from this Court declaring his right to receive the transcripts under Missouri law.

Discussion

Rule 12(h)(3) of the Federal Rules of Civil Procedure states: “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

Plaintiff brings this action under state law. There is no federal question. And diversity jurisdiction does not exist because the parties are located in the same state. As a result, the Court lacks subject matter jurisdiction over this action, and the Court will summarily dismiss this case.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [Doc. #3] is **GRANTED**.

IT IS FURTHER ORDERED that the complaint is **DISMISSED**.

An Order of Dismissal shall accompany this Memorandum and Order.

Dated this 18th day of July, 2011.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE