

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BENJAMIN WILLIAM WAGNER,

Plaintiff,

v.

JAZEALL BROWN, et al.,

Defendants.

No. 4:15-CV-1277 JAR

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion for order directing the Missouri Department of Correction ("MDOC") to return \$2.00 that was removed from his prison inmate account to pay the filing fee in this closed action. Plaintiff complains that MDOC deducted money from his account when his balance was less than \$10.

Under 28 U.S.C. § 1915(b)(1), if a prisoner brings a civil action, or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of the filing fee. The court shall assess, and when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of the average monthly deposit or the average monthly balance in the prisoner's account for the six-month period immediately preceding the filing of the complaint or the notice of appeal.

In this action, plaintiff was assessed an initial partial filing fee of \$12.60 on August 21, 2016. [Doc. #5] The Court then contacted the Missouri Department of Corrections to let the Department know how to deduct payments from plaintiff's prison inmate account in accordance with the Prison Litigation Reform Act until plaintiff's filing fees were paid in full. *See* Letter to MDOC re: Initiation of Prison Installment Payments Doc. #20.

28 U.S.C. § 1915(b)(2) sets forth the requirements for prisoner installment payments under the Prison Litigation Reform Act:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

In support of his motion for return of his money, plaintiff has attached of copy of his inmate account. Plaintiff's inmate account, however, is only a partial account statement for November and December of 2018. It does not show the entire month of November 2018, which would be necessary for the Court to calculate exactly how much income plaintiff had in the full preceding month to the month that MDOC removed the \$2.00 filing fee, in this case on December 10, 2018.

Despite the lack of a full inmate account statement, the Court feels compelled to point out that even from the income the Court is able to see from November 10, 2018 through November 30, 2018, plaintiff's request for relief must be denied.

Plaintiff had \$40.00 as income between November 10, 2018 and November 30, 2018. Twenty-percent (20%) of \$40.00 is \$8.00, and only \$6.00 was taken out of plaintiff's account to pay filing fees in December of 2018, which is under the \$8.00 limit that was allowed under the Prison Litigation Reform Act, 28 U.S.C. § 1915(b)(2). Moreover, the amount for filing fees was removed from plaintiff's account at the time that plaintiff had a total of \$57.00 in his account on on December 10, 2018; plaintiff had \$47.00 in his account that he transferred from savings as well as his payroll tip of \$10.00 that he was provided on that same date.¹

¹Although it appears that plaintiff spent \$47.00 at the canteen at Farmington Correctional Center on December 10, 2018, this may not have been known to the Jefferson City, Missouri MDOC office on that date.


For the reasons outlined above, the Court will deny plaintiff's request for order directing the Missouri Department of Correction ("MDOC") to return \$2.00 removed from his prison inmate account to pay the filing fee in this closed action.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for order directing the Missouri Department of Correction ("MDOC") to return money to his inmate account [Doc. #100] is **DENIED.**

IT IS FURTHER ORDERED that an appeal of this Order would not be taken in good faith.

Dated this 11th day of January, 2019.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE