

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

ALFRED C. MICHEL,)	
Register No. 1005390,)	
)	
Plaintiff,)	
)	
v.)	No. 05-4253-CV-C-SOW
)	
DAVID DORMIRE, et al.,)	
)	
Defendants.)	

ORDER

On December 6, 2005, the United States Magistrate Judge recommended dismissing plaintiff's claims for failure to state a claim on which relief may be granted. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Additionally, the court notes that plaintiff is a frequent litigator. While incarcerated plaintiff has had three or more cases dismissed under 28 U.S.C. § 1915, as frivolous or for failure to state a claim on which relief may be granted. See, e.g., Michel v. Dormire, No. 05-4178 (W.D. Mo. 2005); Michel v. Heather, No. 05-4187 (W.D. Mo. 2005); Michel v. Correctional Medical Services, No. 05-4197 (W.D. Mo. 2006); Michel v. Corser, No. 05-4215 (W.D. Mo. 2005); and Michel v. Grisham, No. 05-4229 (W.D. Mo. 2006). Pursuant to 28 U.S.C. § 1915(g), a prisoner must be denied leave to proceed in forma pauperis under section 1915 if, while incarcerated, he has had three or more cases dismissed as frivolous, malicious, or for failure to state a claim on which relief may be granted. The only exception to the successive petition clause is when the prisoner faces "imminent danger of serious

physical injury." 28 U.S.C. § 1915. Plaintiff's asserted property claims do not constitute or allege an imminent danger of serious physical injury.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$255.00 appellate filing fee, regardless of the outcome of the appeal. *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

THEREFORE, IT IS ORDERED that the December 6, 2005, report and recommendation is adopted [22]. It is further

ORDERED that plaintiff's claims are dismissed, pursuant to 28 U.S.C. § 1915A, for failure to state a claim on which relief may be granted and/or pursuant to 28 U.S.C. § 1915(g), because plaintiff has had three or more cases or appeals dismissed as frivolous or for failure to state a claim. It is further

ORDERED that plaintiff's motions for injunctive relief for the return of his property are denied [3, 5, 16, 19, 28, 29, 30].

/s/Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

Dated: 2-14-06