Jackson v. Ellison et al Doc. 16

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DAMIEN JACKSON,)	
Plaintiff,)	
v.)	No. 3:09-0511 JUDGE HAYNES
CRIMINAL STREET GANG MEMBERS:)	00202111111
MALISSA "SUNSHINE ELLISON)	
(364476), ET AL.,)	
Defendants.)	

ORDER

Before the Court is a *pro se* prisoner complaint brought under the "common law." Plaintiff is an inmate at the Lois M. DeBerry Special Needs Facility (DeBerry) in Nashville.

Plaintiff's application to proceed *in forma pauperis* was previously granted, subject to "an extended payment of the filing fee." (Docket Entry No. 13) Plaintiff is herewith assessed the civil filing fee of three hundred fifty dollars (\$350.00). Pursuant to 28 U.S.C. §§ 1915(b)(1)(A) and (B), the custodian of Plaintiff's inmate trust fund account at the institution where he now resides is directed to submit to the Clerk of Court, as an initial payment, whichever is the greater of:

- (a) twenty percent (20%) of the average monthly deposits to Plaintiff's inmate trust fund account; or
- (b) twenty percent (20%) of the average monthly balance in Plaintiff's inmate trust fund account for the prior six (6) months.

Thereafter, the custodian shall submit twenty percent (20%) of Plaintiff's preceding monthly income, or income credited to Plaintiff's inmate trust fund account for the preceding month, but only when such monthly income exceeds ten dollars (\$10.00). Such payments shall continue until the \$350.00 filing fee has been paid in full to the Clerk of Court as prescribed by 28 U.S.C. § 1914(a). 28 U.S.C. § 1915(b)(2).

As provided in the accompanying memorandum, the complaint is hereby **DISMISSED** in

for failure to state a claim on which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B)(i)-(ii);

1915A(b)(1). An appeal from the judgment rendered herein would **NOT** be taken in good faith.

Therefore, Plaintiff is **NOT** certified to pursue an appeal from this judgment in forma pauperis. 28

U.S.C. § 1915(a)(3); Coppedge v. United States, 369 U.S. 438, 444-46 (1962). Nevertheless, should

Plaintiff file a notice of appeal, he either must pay the Clerk of Court the full four hundred fifty-five

dollar (\$455.00) appellate filing fee, or submit a new application to proceed in forma pauperis with

a certified copy of his inmate trust account statement for the six (6) month period preceding the filing

of his notice of appeal. 28 U.S.C. §§ 1915(a)(1) and (a)(2); McGore v. Wrigglesworth, 114 F.3d

601, 605 (6th Cir. 1997).

The Clerk is **INSTRUCTED** to forward a copy of this Order to the Warden at DeBerry to

ensure that the custodian of Plaintiff's inmate trust fund account complies with the portion of the

Prison Litigation Reform Act that pertains to the payment of filing fees. Should Plaintiff be

transferred from his present place of confinement, the custodian of his inmate trust fund account

shall ensure that a copy of this Order follows Plaintiff to his new place of confinement. All

payments made pursuant to this order shall be forwarded to the Clerk of Court for the Middle District

of Tennessee.

Entry of this Order shall constitute the judgement in this action.

It is so **ORDERED**.

ENTERED this the _/9 day of August, 2009.

United States District Judge

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