

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

Marcus Jamar Wade,

Plaintiff,

v.

Case No. 18-cv-111

Milwaukee County Jail, et al.,

Defendants.

DECISION AND ORDER TO SHOW CAUSE

On January 22, 2018, Marcus Jamar Wade filed two *pro se* complaints under 42 U.S.C. § 1983 each accompanied by a motion for leave to proceed without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. The case numbers for those matters are 18-CV-110 and 18-CV-111. On January 25, 2018, I sent an order to Wade for each of those cases. The order for case number 18-CV-110 instructed Wade to forward to the Clerk of Court by February 16, 2018, the sum of \$29.60 as an initial partial filing fee for that action. The order for case number 18-CV-111, the matter at issue here, instructed Wade to forward to the Clerk of Court by February 16, 2018, the sum of \$29.60 as an initial partial filing fee for that action. In each of those orders, I advised Wade that, upon payment of the fee, I would determine whether the action could proceed without prepayment of the filing fee. To date, Wade has paid the initial partial filing fee for case number 18-CV-110, but he has not paid the initial partial filing fee for this case, 18-CV-111. From his failure to pay the initial filing fee, I infer that Wade no longer wants to prosecute this action.

However, before recommending dismissal of this case, I must determine whether Wade is at fault for the non-payment. *See Thomas v. Butts*, 745 F.3d 309, 312-13 (7th Cir. 2014). A court may not dismiss a prisoner’s case if he has no funds in his account. *Id.* at 312; *see also* § 1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.”). “But if the court finds that the prisoner is unable to pay the partial filing fee at the time of collection because he intentionally depleted his account to avoid payment, the court in its sound discretion may dismiss the action.” *Thomas*, 745 F.3d at 312 (citations and internal quotation omitted).

THEREFORE, IT IS ORDERED that on or before **March 12, 2018**,. Wade shall either pay the initial partial filing fee of \$29.60 or explain to the court why he is unable to do so. If Wade fails to do either, I will recommend that this case be dismissed based on his failure to diligently prosecute it. *See* Civ. L.R. 41(c).

IT IS ALSO ORDERED that a copy of this order be sent to the warden of the institution where Wade is incarcerated.

Dated at Milwaukee, Wisconsin this 28th day of February, 2018.

BY THE COURT:

s/Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge