

STATE OF MICHIGAN
COURT OF APPEALS

DAVID J. SCOTT,

Plaintiff-Appellant,

v

BRUCE WALDRON,

Defendant-Appellee.

UNPUBLISHED

February 11, 2000

No. 212681

Ingham Circuit Court

LC No. 98-088077-NO

Before: O'Connell, P.J., and Meter and T. G. Hicks*, JJ.

MEMORANDUM.

Plaintiff, acting *in propria persona*, appeals as of right from the trial court's order dismissing this case with prejudice for failure to pay the filing fee. We affirm.

Plaintiff, an inmate in the custody of the Michigan Department of Corrections, filed suit in Wayne Circuit Court alleging that defendant and others conspired to make false allegations against him. The circuit court waived fees and costs. On March 11, 1998 the trial court granted defendants' motion to change venue and transferred the case to Ingham Circuit Court. The order directed plaintiff to pay the applicable statutory filing fee within fifty-six days under MCR 2.223(B)(2).

In Ingham Circuit Court, plaintiff filed motions to disqualify the trial judge and to waive fees and costs. The court denied both motions. Defendant moved for summary disposition pursuant to MCR 2.116(C)(4), arguing that he was entitled to dismissal of the action for the reason that plaintiff had not paid the statutory filing fee as ordered. Subsequently, the court dismissed the action as a result of plaintiff's failure to pay the filing fee.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the trial court abused its discretion by dismissing the action. We disagree and affirm. Pursuant to MCR 2.223(B)(1), if a case is transferred to a county in which venue would

* Circuit judge, sitting on the Court of Appeals by assignment.

have been proper, the plaintiff is obligated to pay the costs, including the statutory

filing fee of the county to which the case has been transferred. If the fees and costs are not paid within fifty-six days after entry of the order changing venue, the action “must” be dismissed. MCR 2.223(B)(2). Plaintiff did not pay the fees and costs required by the Ingham Circuit Court within fifty-six days after entry of the order changing venue. Plaintiff filed a motion to waive fees and costs in Ingham Circuit Court, but he failed to file the required supporting documentation to allow for computation of the appropriate fee in a timely manner. See MCL 600.2963(1); MSA 27A.2963(1). Thus, the trial court did not err by dismissing the action.

Finally, plaintiff argues that because the trial court had disqualified itself from other cases he had filed, the court abused its discretion by failing to disqualify itself from the instant case to avoid even the appearance of impropriety. We disagree. A judge is disqualified when he or she cannot hear a case impartially. MCR 2.003(B). The party who challenges a judge must overcome a heavy presumption of judicial impartiality. *Cain v Dep’t of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). Plaintiff has failed to overcome that presumption.

Affirmed.

/s/ Peter D. O’Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks