

Foster-Bey v. Rubitschun

United States District Court for the Eastern District of Michigan, Southern Division

April 19, 2005, Decided

CIVIL NO. 05-71318

Reporter: 2005 U.S. Dist. LEXIS 40135

KENNETH FOSTER-BEY, #142187, JOHN ALEXANDER, #163875, WAYMON KINCAID, #137927, WILLIAM SLEEPER, #116539, ROBERT WEISENAUER, #157085, ERIC MCCULLUM, #120287, GERALD LEE HESSEL, #150163, Plaintiffs, v. JOHN S. RUBITSCHUN, ET AL., Defendants.

Subsequent History: Motion granted by, in part, Motion denied by, in part, Dismissed by, in part Foster-Bey v. Rubitschun, 2005 U.S. Dist. LEXIS 40869 (E.D. Mich., Aug. 18, 2005)

Counsel: [*1] For Kenneth Foster, John Alexander, Waymon Kincaid, William Sleeper, Robert Weisenauer, Eric McCullum, Gerald Hessell, Plaintiffs: Paul D. Reingold, University of Michigan, Clinical Law Program, Ann Arbor, MI.

For Anthony Lynch, Consol Plaintiff, Pro se, New Haven, MI.

For James Clark, Consol Plaintiff, Pro se, Saginaw, MI.

For Holley Davis, Consol Plaintiff, Pro se, Detroit, MI.

For Johnathan Martin, Consol Plaintiff, Pro se, Freeland, MI.

For Billy Ray Abernathy, Consol Plaintiff, Pro se, Saginaw, MI.

For Brian Hagood, Consol Plaintiff, Pro se, Saginaw, MI.

For Brian Luckett, Consol Plaintiff, Pro se, Saginaw, MI.

For Timothy Ganderson, Consol Plaintiff, Pro se, Saginaw, MI.

For Giovanni Cipriano, Intervenor Plaintiff, Pro se, Freeland, MI.

For Ralph Cobb, Intervenor Plaintiff, Pro se, Freeland, MI US.

For Melvin Gunn, Intervenor Plaintiff, Pro se, Freeland, MI.

For Henry Hill, Intervenor Plaintiff, Pro se, Freeland, MI.

For William Jenkins, Intervenor Plaintiff, Pro se, Freeland, MI.

For Maurice Jones, Intervenor Plaintiff, Pro se, Marensico, MI.

For Gilberto Osequeda, Intervenor Plaintiff, Pro se, Freeland, [*2] MI US.

For Roderick Walker, Intervenor Plaintiff, Pro se, Muskegon, MI US.

For John S. Rubitschun, in his/her official capacity as member of the Michigan Parole Board, James Atterberry, in his/her official capacity as member of the Michigan Parole Board, Miguel Berrios, in his/her official capacity as member of the Michigan Parole Board, Charles Braddock, in his/her official capacity as member of the Michigan Parole Board, Stephen DeBoer, in his/her official capacity as member of the Michigan Parole Board, Enid Livingston, in his/her official capacity as member of the Michigan Parole Board, James Quinlan, in his/her official capacity as member of the Michigan Parole Board, Marianne Samper, in his/her official capacity as member of the Michigan Parole Board, Barbara Sampson, in his/her official capacity as member of the Michigan Parole Board, Artina Hartman, in his/her official capacity as member of the Michigan Parole Board, Patricia L. Caruso, in her official capacity as director of the Michigan Department of Corrections, Defendants: Frank J. Monticello, Kevin R. Himebaugh, Leo H. Friedman, Michigan Department of Attorney General, Lansing, MI.

Judges: Nancy G. Edmunds, United [*3] States District Judge.

Opinion by: Nancy G. Edmunds

Opinion

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTIONS TO PROCEED IN FORMA PAUPERIS PURSUANT TO 28 U.S.C. § 1915(g)

Plaintiffs are state prisoners currently in the custody of the Michigan Department of Corrections. Through counsel, they have filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiffs have filed individual applications to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a).

Plaintiffs must pay the full filing fee for this civil action. 28 U.S.C. § 1915(b)(1). Each prisoner is proportionally liable for any fees and costs that may be assessed. In re Prison Litigation Reform Act, 105 F.3d 1131, 1138 (6th Cir. 1997). Thus, any fees and costs for this action must be equally divided among the seven plaintiffs. Id. Accordingly, each Plaintiff is liable for \$ 35.71 of the \$ 250.00 filing fee.

The Court concludes from the financial data before it that Plaintiff Hessel has not established indigence and is able to prepay the filing fee for this action. Plaintiff Hessel [*4] has a current spendable account balance of \$ 502.49. Therefore, the Court denies Plaintiff Hessel's application to proceed *in forma pauperis*. Accordingly, Plaintiff Hessel must pay his portion of the \$ 250.00 filing fee, \$ 35.71, within thirty days from the date of this Order. Failure to do so will result in the dismissal of Plaintiff Hessel from this action.

The Court has reviewed the remaining Plaintiffs' financial affidavits, and certified account statements or their equivalent. Having considered these items, the Court grants Plaintiffs Foster-Bey, Alexander, Kincaid, Sleeper, Weisenauer, and McCullum's applications to proceed without prepayment of the filing fee for this action. 28 U.S.C. § 1915(a)(1). The Court must assess and, if funds exist, collect from these Plaintiffs' accounts an initial partial filing fee, consisting of twenty percent (20%) of the greater of (1) the average monthly deposits to each plaintiffs account, or (2) the average monthly balance in each plaintiffs account for the preceding six (6) months. 28 U.S.C. § 1915(b).

The initial partial filing fee for Kenneth Foster-Bey is **\$ 2.00**. The initial [*5] partial filing fee for John Alexander is **\$ 16.00**. The initial partial filing fee for Waymon Kincaid is **\$ 0.00**. The initial partial filing fee for William Sleeper is **\$ 1.00**. The initial partial filing fee for Robert Weisenauer is **\$ 3.00**. The initial partial filing fee for Eric McCullum is **\$ 17.00**. ***After plaintiffs pay their initial partial filing fees, each plaintiff is equally and separately liable for the proportional total sum of \$ 35.71, and they must make monthly payments of twenty percent (20%) of the preceding month's income credited to their accounts until the total sum of \$ 35.71 has been paid. 28 U.S.C. § 1915(b)(2).***

If Plaintiff Hessel fails to pay the \$ 35.71 filing fee within thirty days from the date of this Order, each remaining Plaintiff will be responsible for a recalculated, proportionate share of the full filing fee. If Plaintiff Hessel does not prepay the filing fee, the Court will issue an Amended Order holding each remaining Plaintiff liable for his recalculated, proportionate share of the full filing fee, increased by \$ 5.95.

Typically, when the Court grants a plaintiffs request to [*6] proceed *in forma pauperis*, the Court directs the United States Marshal to effect service without prepayment of costs for such service. In this case, counsel has represented to the Court that counsel will effect service.

Accordingly, the Court **GRANTS** Plaintiffs Foster-Bey, Alexander, Kincaid, Sleeper, Weisenauer, and McCullum's applications to proceed *in forma pauperis* and **ORDERS** the agency having custody of Plaintiffs Foster-Bey, Alexander, Kincaid, Sleeper, Weisenauer, and McCullum to: (1) withdraw or set aside the initial partial filing fee from plaintiffs' trust fund accounts; (2) forward this amount to the Clerk of this Court within thirty (30) days of the date of this order; and (3) in subsequent months, or from time to time, forward payments of twenty percent (20%) of the preceding month's income credited to plaintiffs' accounts to the Clerk of this Court **until each plaintiff has paid his individual and total sum of \$ 35.71 to complete the entire filing fee of \$ 250.00**. The Court will notify the agency having custody of plaintiffs when plaintiffs have paid the entire filing fee.

The Court **DENIES** Plaintiff Hessel's Motion to Proceed *In Forma* [*7] *Pauperis* and **ORDERS** Plaintiff Hessel to prepay \$ 35.71, his portion of the filing fee, within thirty days from the date of this Order.

SO ORDERED.

S/Nancy G. Edmunds

United States District Judge

Dated: April 19, 2005