

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GREGORY LYNN GALES,

Plaintiff,

v.

CASE NO. 05-3321-SAC

J. BYRON MEEKS, et al.,

Defendants.

O R D E R

By an order dated August 3, 2005, the court directed plaintiff to pay the remaining \$100.00 of the district court filing fee, or to submit a motion for leave to proceed in forma pauperis under 28 U.S.C. 1915. The court also directed plaintiff to show cause why the complaint should not be dismissed, based on deficiencies identified by the court in the August 3 order.

The court liberally construed plaintiff's response (Doc. 5) to the August 3 order as a notice of voluntary dismissal, Fed.R.Civ.P. 41(a)(1), and dismissed the complaint on August 11, 2005.

Before the court is plaintiff's pleading titled as a "Notice of Appeal" (Doc. 9). Plaintiff correctly states that he paid the remaining \$100.00 due on the district court filing fee, and that the court order entered on August 11, 2005, implied that plaintiff had not paid this additional fee. The court notes, however, that it did not dismiss the complaint based on plaintiff's nonpayment of the filing fee. Instead, the court

cited plaintiff's response to deficiencies in the complaint as identified in the show cause order dated August 8, 2005, and plaintiff's apparent intent to no longer proceed in this matter.

To the extent plaintiff seeks the return of his \$100.00 payment, the court denies this request. See 28 U.S.C. 1914(a)(clerk is to require parties instituting civil action in United States District Court to pay \$250.00 district court filing fee). Even if plaintiff had filed a motion for leave to proceed in forma pauperis under 28 U.S.C. 1915, and even if such a motion had been granted, plaintiff would still be responsible for full payment of the district court filing fee in this matter. See 28 U.S.C. 1915(b)(1)(prisoner bringing a civil action or appeal in forma pauperis is required to pay the full filing fee).

To proceed on appeal, plaintiff must now pay the \$255.00 appellate filing fee, or plaintiff must submit an executed form motion for seeking leave to proceed in forma pauperis on appeal, pursuant to 28 U.S.C. 1915. See 28 U.S.C. 1915(a)(prisoner seeking to appeal a civil judgment without prepayment of filing fee must submit adequate motion that is supported by certified copy of trust fund account for six month period prior to filing notice of appeal).

IT IS THEREFORE ORDERED that plaintiff is granted twenty (20) days to pay the \$255.00 filing fee for his appeal, or to submit a form motion under 28 U.S.C. 1915 seeking leave to proceed in forma pauperis on appeal.

The clerk's office is to provide plaintiff with a form motion under 28 U.S.C. 1915.

IT IS SO ORDERED.

DATED: This 18th day of August 2005 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge