

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MONTGOMERY CARL AKERS,

Plaintiff,

v.

CASE NO. 09-3280-SAC

KATHRYN H. VRATIL, et al.,

Defendants.

O R D E R

On September 23, 2010¹, the court dismissed plaintiff's *Bivens* complaint because plaintiff was subject to the "3-strike" provision in 28 U.S.C. § 1915(g) and had not paid the \$350.00 district court filing fee. Before the court is plaintiff's motion for reconsideration (Doc. 13), filed October 4, 2010. In his motion, plaintiff maintains he submitted the \$350.00 payment by certified check on July 9, 2010, and states he "is now in the process of retrieving the canceled check from his financial institution." Plaintiff also seeks a court order directing "the clerk's office to show cause why it has not properly appropriated the filing fees of the plaintiff to this case."¹

Court records have been examined and reflect no such payment was received from plaintiff. Nor has plaintiff submitted further documentation regarding the payment cited in his motion. Accordingly, the court finds no factual basis exists for setting

¹The court notes plaintiff's stated intent to amend the complaint to seek recusal of the undersigned judge "once the plaintiff has documented proof of his payment of the fees in this case." (Doc. 13.) No court action is required on a motion or amendment not yet filed.

aside the final order and judgment entered in this matter. Plaintiff's motion, treated as a timely Rule 59(e) motion to alter and amend the judgment, is denied.

IT IS ORDERED that plaintiff's motion for reconsideration (Doc. 13) is denied.

DATED: This 10th day of November 2010 at Topeka, Kansas.

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