

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TERRY BAILEY,

Plaintiff,

Civil No. 09-13848

Hon. John Feikens

v.

MANOR OF WAYNE,

Defendant.

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**OPINION AND ORDER DENYING PLAINTIFF'S APPLICATIONS TO PROCEED  
IN FORMA PAUPERIS, AND FOR APPOINTMENT OF COUNSEL**

Proceeding *pro se*, Plaintiff filed a complaint and application to proceed without prepayment of fees on September 29, 2009. On October 20, 2009, this Court granted Plaintiff's application to proceed *in forma pauperis*, but dismissed Plaintiff's Complaint for failure to file a claim upon which relief could be granted. See 28 U.S.C. §1915(a)(1); Dkt. 3.

On December 7, 2009, Plaintiff filed a Notice of Appeal, together with an Application to Proceed In Forma Pauperis (for the appeal), and an Application for Appointment of Counsel. Dkt Nos. 4-5. The Federal Rules of Civil Procedure require that a civil appeal be filed "within 30 days after the . . . order appealed from is entered." FED. R. CIV. P. 4(a)(1)(A). The time for filing an appeal is jurisdictional, and this Court may not expand the time through its orders. *See Bowles v. Russell*, 551 U.S. 205, 214, 127 S.Ct. 2360 (2007). Plaintiff's Notice of Appeal is therefore untimely, as it was filed 48 days after this Court's October 20, 2009 Order.

The statute governing *in forma pauperis* actions provides that an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. 28 U.S.C.

§ 1915(a)(3). The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917 (1962). An appeal is not taken in good faith if the issue presented is frivolous. *Id.* The same considerations that led this Court to dismiss the Complaint as frivolous also compel the conclusion that an appeal would be frivolous. Moreover, as discussed above, the appeal is untimely.

It is therefore CERTIFIED, pursuant to 28 U.S.C. § 1915(a)(3), that Plaintiff's appeal in this matter is not taken in good faith. Plaintiff's Application to Proceed *In Forma Pauperis* is DENIED accordingly, as is Plaintiff's Application for Appointment of Counsel.

**IT IS SO ORDERED.**

Date: December 15, 2009

s/ John Feikens  
United States District Judge

Proof of Service

I hereby certify that the foregoing order was served on the attorneys/ parties of record on December 15, 2009, by U.S. first class mail or electronic means.

s/Carol Cohron  
Case Manager