

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARNOLD KUERBITZ,

Plaintiff,

v.

ANDREW E. MEISNER, et al.,

Defendants.

Case No. 16-12736
Hon. Terrence G. Berg

**OPINION AND ORDER
GRANTING PLAINTIFF'S APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES OR COSTS ON
APPEAL (DKT. 53) AND DENYING PLAINTIFF'S
APPLICATION/MOTION FOR CERTIFICATION OF
APPEALABILITY (DKT. 54)**

Pending before the Court is Plaintiff's application to proceed without prepaying fees or costs on appeal. Dkt. 53. Federal Rule of Appellate Procedure 24(a)(1) provides that a party to a district court action who desires to appeal *in forma pauperis* must file a motion in the district court. Fed. R. App. P. 24(a)(1). An appeal may not be taken *in forma pauperis* if the court determines that it is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A). “[T]o determine if an appeal is in good faith, a court need only find that a reasonable person could suppose that the appeal has some merit.” *Walker v. O'Brien*, 216 F.3d 626, 631 (7th Cir. 2000).

Examination of Plaintiff's application to proceed *in forma pauperis* reveals that Plaintiff is unable to afford the costs of an appeal. *See* Dkt. 53. Furthermore, the Court finds that an appeal may be taken in this matter in good faith. Accordingly, Plaintiff's application to proceed *in forma pauperis* on appeal is **GRANTED**.¹

Plaintiff also filed with this Court an Application/Motion for Certificate of Appealability, citing Federal Rules of Appellate Procedure 4(a)(1)(b) and 22(b). Dkt. 54. However, Rule 22(b)—which governs habeas corpus proceedings—does not apply in this case. *See* Fed. R. App. P. 22(b). The applicable Federal Rules do not require Plaintiff to obtain a Certificate of Appealability to appeal in this matter. Plaintiff's Motion is therefore **DENIED**.

SO ORDERED.

Dated: December 12, 2017 s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

¹ The Court notes that Federal Rule of Appellate Procedure 24(a)(3) also allows Petitioner to proceed *in forma pauperis* on appeal in this matter. Rule 24(a)(3) provides that a party who was permitted to proceed *in forma pauperis* in its district-court action may proceed on appeal *in forma pauperis* without further authorization. Fed. R. App. P. 24(a)(3). The exceptions to Rule 24(a)(3) do not apply in this case. *See id.* at 24(a)(3)(A)-(B). This Court permitted Plaintiff to proceed *in forma pauperis* in his district-court action. *See* Dkt. 5. Thus, Plaintiff may proceed accordingly on appeal.

Certificate of Service

I hereby certify that this Order was electronically filed, and the parties and/or counsel of record were served on December 12, 2017.

s/A. Chubb

Case Manager