

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

MAY 11 2015

Clerk, U.S. District Court
District Of Montana
Billings

SCOTTRADE, INC., an Arizona
corporation,

Plaintiff,

vs.

KRISTINE DAVENPORT,
individually, SHANE M. LEFEBER,
individually, CHRISTOPHER
GIBBONS, individually, KIMBERLY
CHABOT, individually, PATRICIA
FALLER, individually,

Defendants.

CV 11-03-BLG-SPW

OPINION and ORDER

PATRICIA FALLER, individually,
CHRISTOPHER GIBBONS,
individually, KIMBERLY CHABOT,
individually, SHANE M. LEFEBER,
individually,

Cross-Claimants,

vs.

KRISTINE DAVENPORT,
individually,

Cross-Defendant.

On January 11, 2011, Plaintiff Kristine Davenport filed her complaint. (Doc. 1). This court granted summary judgment on all claims on June 5, 2012. (Doc. 268). On September 5, 2012, the court granted Davenport's request to proceed in forma pauperis on appeal. (Doc. 283). In its memorandum, the Ninth Circuit remanded for this court to determine the amount of attorneys' fees to which Patricia and Arnold Faller and Shane Lefeber were entitled to out of Davenport's share of James Lefeber's Scottrade funds. (Doc. 290). This court determined the attorney fee awards on April 10, 2015. (Docs. 366-68). On May 1, 2015, Davenport moved for leave to proceed on appeal in forma pauperis. (Doc. 382). She appealed on May 5, 2015. (Doc. 383).

The Ninth Circuit Court of Appeal issued a Referral Notice to this court on May 6, 2015. (Doc. 385). The Referral Notice provides in part:

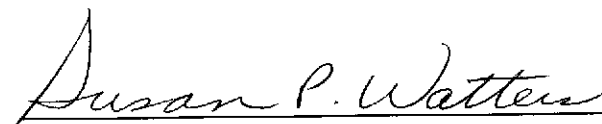
This matter is referred to the district court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. *See* 28 U.S.C. § 1915(a)(3); *see also Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where district court finds the appeal to be frivolous).

(*Id.*) While some of the issues in her affidavit are plainly frivolous, Davenport's appeal with respect to this court's orders regarding the Fallers and Lefeber's attorney fee awards is not plainly frivolous and so her in forma pauperis status must continue. *Gilbert v. United States*, 278 F.3d 61, 62 (9th Cir. 1960) (citing *Ellis v. United States*, 356 U.S. 674, 675 (1958); *see also Hooker*, 302 F.3d at 1092

(holding that in forma pauperis status must be authorized as a whole and not on a piecemeal basis).

Accordingly, IT IS HEREBY ORDERED, in response to the Ninth Circuit's referral notice (doc. 385) that Davenport's in forma pauperis status shall continue for this appeal.

DATED this 8th day of May 2015.


SUSAN P. WATTERS
United States District Judge