

3IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

ANDREW CLARKE and)
BEVERLY ELAINE CORBIN,)
)
Plaintiffs,)
)
v.)
)
RAY D. GOODSON, et al.,)
)
Defendants.)

CIVIL ACTION NO.
2:17cv730-MHT
(WO)

ORDER

This cause is now before the court on the plaintiffs' notice of appeal (doc. no. 43). Although the plaintiffs paid the filing fee at the inception of this case, the plaintiffs have not submitted the required appellate filing fee. As the appeal cannot proceed without either the filing fee or an order allowing the appeal to proceed in forma pauperis, the court will treat the notice of appeal as a motion to proceed on appeal in forma pauperis.

28 U.S.C. § 1915(a) 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." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," Coppedge v. United States, 369 U.S. 438, 445 (1962), or "has no substantive merit." United States v. Bottoson, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam); see also Rudolph v. Allen, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam); Morris v. Ross, 663 F.2d 1032 (11th Cir. 1981). Applying this standard, this court is of the opinion, for the reasons stated in the recommendation of the magistrate judge, that the plaintiffs' appeal is without a legal or factual basis and, accordingly, is frivolous and not taken in good faith. See, e.g., Rudolph v. Allen, supra; Brown v. Pena, 441 F. Supp. 1382 (S.D. Fla. 1977), aff'd without opinion, 589 F.2d 1113 (5th Cir. 1979).

Accordingly, it is ORDERED that the plaintiffs'

motion to proceed on appeal in forma pauperis is denied; and that the appeal in this cause is certified, pursuant to 28 U.S.C. § 1915(a), as not taken in good faith.

DONE, this the 26th day of October, 2018.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE