

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
HARRISON DIVISION**

**BEN MILBURN**

**PLAINTIFF**

**v.**

**Case No. 3:15-CV-03033**

**JERRY F. KIRK; JOHN KIRK;  
DAVID KIRK; ROGER DAUGHERTY**

**DEFENDANTS**

**ORDER**

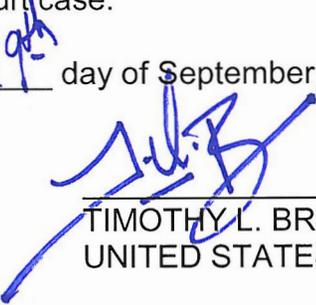
Now pending before the Court is the Report and Recommendation (“R & R”) (Doc. 14) of United States Magistrate Judge for the Western District of Arkansas Mark E. Ford. The Magistrate Judge recommends that Plaintiff Ben Milburn’s Motion for Leave to Appeal *in forma pauperis* (Doc. 13) be denied. Milburn filed an Objection (Doc. 15) to the Magistrate Judge’s recommendation and a Motion to Stay the proceedings in State court (Doc. 17). In light of Milburn’s Objection, the Court has conducted a *de novo* review of the case, including the stated basis for Milburn’s Motion for Leave to Appeal *in forma pauperis* and Milburn’s Objection to the R & R.

Milburn desires to appeal the Order of June 26, 2015 (Doc. 10), in which the Court determined that the case should be remanded to State court for lack of federal subject matter jurisdiction. In reviewing Milburn’s Objection to the R & R, he offers neither law nor fact that would cause the Court to reconsider its decision to remand the case. Accordingly, an appeal of the Court’s decision would be a frivolous endeavor, and *in forma pauperis* status is appropriately denied for that reason alone. The Court further finds that the Magistrate Judge’s reasoning as to Milburn’s alleged inability to pay the costs of an appeal is well-reasoned. Milburn’s attempt to clarify why he cannot pay the costs of an appeal,

as set forth in his Objection, is nonsensical. He has not properly demonstrated an inability to pay.

**IT IS THEREFORE ORDERED** that the R & R (Doc. 14) is **ADOPTED IN ITS ENTIRETY**; the Motion for Leave to Appeal *in forma pauperis* (Doc. 13) is **DENIED**; and the Motion to Stay the proceedings in State court (Doc. 17) is also **DENIED**, as this Court lacks jurisdiction over the State court case.

**IT IS SO ORDERED** this 29<sup>th</sup> day of September, 2015.



---

TIMOTHY L. BROOKS  
UNITED STATES DISTRICT JUDGE