

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

TED HAMILTON

PLAINTIFF

v.

Civil No. 4:13-cv-04038

JAMES SINGLETON

DEFENDANTS

ORDER GRANTING MOTION FOR TRANSCRIPT AT GOVERNMENT EXPENSE

Plaintiff Ted Hamilton proceeded in this action *pro se* and *in forma pauperis* pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's Motion for Trial Transcript at Government Expense (ECF No. 163). The Parties have consented to the jurisdiction of a magistrate judge to conduct any and all proceedings in this case, including conducting all post-judgment proceedings. ECF No. 36. Pursuant to this authority, the Court finds this Motion ready for decision and issues this Order.

1. BACKGROUND

Plaintiff filed his Complaint on April 10, 2013. ECF No. 1. A jury trial was held on September 29, 2015, resulting in a verdict in favor of the Defendant. A Final Judgment was entered on September 30, 2015, dismissing Plaintiff's Complaint with prejudice. ECF No. 137. On October 15, 2015 Plaintiff filed a *Pro Se* Notice of Appeal and a Motion for Leave to Appeal *in forma pauperis* (IFP). ECF Nos. 145, 146. This Court entered an Order granting Plaintiff's IFP status on October 20, 2015.

On December 2, 2015, Plaintiff filed the present motion requesting that he be provided a copy of the trial transcript for use in connection with his appeal at government expense because he has been approved to proceed with his appeal *in forma pauperis* and he is unable to afford the cost of the transcript. ECF 163.

2. LEGAL STANDARD

The grant of leave to proceed *in forma pauperis* does not automatically entitle a civil litigant to a transcript at government expense. *See* 28 U.S.C. § 753 (f); *Jordan v. Carter*, 451 Fed. Appx. 929 (2016 Unpublished Decision) citing *Rhodes v. Corps of Eng'rs*, 589 F.2d 358, 359 (8th Cir. 1978). Plaintiff must first demonstrate that his claims are non-frivolous and that the document is necessary to decide the issues presented in the case. 28 U.S. C. § 753 (f) (movant under § 2255 entitled to have government pay for transcript where he demonstrates non-frivolous claim and transcript is necessary to decide issue): *United States v. MacCollom*, 426 U.S. 317, 325-27, 96 S.Ct. 2084, 48 L.Ed. 2d 666 (1976).

3. DISCUSSION

Plaintiff's claim in this case survived Summary Judgment and was heard by a jury. A transcript of the trial is necessary for Plaintiff to proceed with his appeal and is required in order for the Court of Appeals to decide any issue raised in the appeal.

4. CONCLUSION

For the reasons set forth above, Plaintiff's Motion for Transcript at Government Expense (ECF No. 163) is **GRANTED**. The official court reporter for the Western District of Arkansas is **DIRECTED** to prepare and provide Plaintiff with a copy of the transcript from his jury trial conducted on September 29, 2015. Further the Clerk of the Court is **DIRECTED** to pay for the transcript from the Library Fund pursuant to Local Rule 83.6.

DATED this 3rd day of March 2016.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
UNITED STATES MAGISTRATE JUDGE