

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

TED HAMILTON

PLAINTIFF

v.

Civil No. 4:13-cv-4038

JAMES SINGLETON; JOAN  
MCCLEAN; JOHNNY GODBOLT;  
and STEPHEN GLOVER

DEFENDANTS

**ORDER**

This is a civil rights action filed by Plaintiff Ted Hamilton pursuant to 42 U.S.C. § 1983. Plaintiff is currently incarcerated in the Arkansas Department of Corrections Wrightsville Unit. Currently before the Court is Plaintiff's Motion for Leave to Appeal in Forma Pauperis ("IFP"). ECF No. 66. The Parties have consented to the jurisdiction of a magistrate judge to conduct any and all proceedings in this case, including conducting the trial, ordering the entry of a final judgment, and conducting all post-judgment proceedings. ECF No. 36. Pursuant to this authority, the Court finds this Motion ready for decision and issues this Order.

On March 28, 2014, the Court denied Plaintiff's Motion for Partial Summary Judgment and granted in part and denied in part Defendants' Motion for Summary Judgment. ECF No. 53. This Order dismissed Plaintiff's denial and delay of medical care claims against Defendants McClean, Godbolt, and Glover and dismissed the same Defendants from this action. The claims against Defendant Singleton are still pending. ECF No. 53. On April 21, 2014, Plaintiff filed a Notice of Appeal (ECF No. 65), and Motion for Leave to Appeal IFP (ECF No. 66).

Pursuant to 28 U.S.C. § 1915(a)(3) "[a]n appeal may not be taken in forma pauperis if the

trial court certifies in writing that it is not taken in good faith.” In this case, the Court only partially dismissed the claims and Defendants. The claim against Defendant Singleton is still pending. Pursuant to the terms of Rule 54(b) of the Federal Rules of Civil Procedure, when a case involves more than one claim, if an order, does not dispose of all claims it is not considered a final appealable judgment unless the trial court directs that final judgment be entered as to claims that were dismissed.

Final judgment was not entered pursuant to Rule 54(b) in the order entered in this case. In other words, the order appealed from does not constitute a final appealable judgment. Accordingly, any appeal at this stage of the litigation would be frivolous and not taken in good faith. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Accordingly, Plaintiff’s Motion for Leave to Appeal IFP (ECF No. 66) is **DENIED** as the appeal is not taken in good faith, 28 U.S.C. § 1915(a)(3). I further **DIRECT** the Clerk to collect the \$505 filing fee pursuant to the terms of the Prison Litigation Reform Act. Plaintiff may renew his Motion for Leave to Appeal IFP with the Court of Appeals for the Eighth Circuit. Fed. R. App. P. 24(a).

**IT IS SO ORDERED this 29th day of April 2014.**

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