

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

RONALD CHERRY

PLAINTIFF

v.

Civil No. 4:15-cv-4039

SOUTHERN REFRIGERATED TRANSPORT

DEFENDANT

**ORDER**

Ronald Cherry, Plaintiff filed this action on April 27, 2015. ECF No. 1. On August 3, 2015, United States District Judge Susan O. Hickey, entered an Order adopting a Report and Recommendation and Granted Defendant's Motion to Dismiss dismissing the Plaintiff's Complaint with prejudice. ECF No. 18. Thereafter, Plaintiff filed his Notice of Appeal (ECF No. 419) and Motion for Leave to Appeal *In Forma Pauperis* (IFP). ECF No. 421. The Motion for Leave to proceed IFP on appeal was referred to the undersigned for decision.

Plaintiff filed his Complaint and paid the filing fee on April 27, 2015. He was not proceeding IFP during the pendency of this case. Following the Court's dismissal of his case, Plaintiff filed a Notice of Appeal and his Motion for Leave to Appeal *In Forma Pauperis*. ECF No. 421. Because Plaintiff has not been previously granted leave to proceed IFP, Federal Rule of Appellate Procedure 24(a)(1) applies to this Motion. Rule 24(a)(1) provides in part:

(a) Leave to Proceed in Forma Pauperis.

(1) Motion in the District Court. Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) Action on the Motion. If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

In this case, Plaintiff did not submit an affidavit as required by FED. R. APP. P. 24(a)(1)(A). Further, Plaintiff did not state the issues he intends to present on appeal as required by FED. R. APP. P. 24(a)(1)(C).<sup>1</sup> He has, therefore, failed to comply with the Federal Rules of Appellate Procedure in perfecting his *in forma pauperis* appeal. I note Plaintiff is proceeding *pro se* at this time and did use the form provided by the Courts in seeking *in forma pauperis* status when filing an initial complaint in district court, however, such a form is insufficient to comply with FED. R. APP. P. 24(a)(1).

Furthermore, even assuming Plaintiff had complied with FED. R. APP. P. 24(a), Plaintiff's Motion for Leave to Appeal *In Forma Pauperis* would should be denied because according to his Motion, Plaintiff has annual income sources of \$28,163.46.<sup>2</sup>

For the reasons stated, Plaintiff's Motion for Leave to Appeal *In Forma Pauperis* (ECF. No. 421) is **DENIED**.

**IT IS SO ORDERED this 15th day of September, 2015.**

/s/ Barry A. Bryant  
HON. BARRY A. BRYANT  
U.S. MAGISTRATE JUDGE

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<sup>1</sup>I note that Plaintiff has claimed entitlement to proceed *in forma pauperis* in the Motion filed herein, in compliance with FED. R. APP. P. 24(a)(1)(B). However, as noted above, he failed to fully comply with FED. R. APP. P. 24(a). Thus, despite his compliance with part of the rule he is not entitled to proceed IFP.

<sup>2</sup>Based on Plaintiff's claim of take home pay of \$1,083.21 every two weeks. ECF No. 421.