

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

ROBERT DEVINE

PLAINTIFF

v.

Case No. 4:18-cv-4156

WARDEN JEFFIE WALKER, et al.

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed on September 12, 2019, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 39). Judge Bryant recommends that the Court deny Plaintiff's Motion for Leave to Appeal *in forma pauperis* ("IFP"). (ECF No. 38). Plaintiff has not objected to the Report and Recommendation, and his time to do so has passed. *See* 28 U.S.C. § 636(b)(1). The Court finds the matter ripe for consideration.

On November 15, 2018, Plaintiff filed this case pursuant to 42 U.S.C. § 1983, alleging constitutional violations that occurred while he was incarcerated in the Miller County Jail. On May 3, 2019, the Court entered an order staying this action because Plaintiff is currently incarcerated in Texas and Plaintiff's out-of-state incarceration poses difficulty regarding court appearances and discovery. The Court subsequently denied Plaintiff's Motion to Reconsider. (ECF No. 32). On August 22, 2019, Plaintiff filed a notice of appeal. On September 10, 2019, Plaintiff filed a Motion for Leave to Appeal *in forma pauperis*.

On September 12, 2019, Judge Bryant filed the instant Report and Recommendation. Judge Bryant found that the Court's order staying this action is not a final judgment which Plaintiff may appeal at this time. As such, Judge Bryant concluded that an appeal of the order staying this

action would not be taken in good faith and, thus, the Court should deny Plaintiff's Motion for Leave to Appeal *in forma pauperis*.

The Court declines to adopt the Report and Recommendation. Because Plaintiff is a prisoner, he may not proceed IFP "if the trial court certifies in writing that [the appeal] is not taken in good faith." 28 U.S.C. § 1915(a)(3). Good faith is demonstrated when a party seeks review of any non-frivolous issue. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Upon consideration, it appears that the order staying this action is not an immediately appealable final order. But the Court will not deem Plaintiff's appeal to be "frivolous." Therefore, the Court finds that Plaintiff's appeal is taken "in good faith" for purposes of 28 U.S.C. § 1915(a)(3).

Accordingly, Plaintiff's Motion for Leave to Appeal *in forma pauperis* (ECF No. 38) should be and hereby is hereby **GRANTED**. Pursuant to the Prison Litigation Reform Act, the Clerk is **DIRECTED** to collect the \$505 filing fee from the Plaintiff.

IT IS SO ORDERED, this 7th day of October, 2019.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge