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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THOMAS D. BRALEY,

CASE NO. 1:07-cv-01423-AWI-BAM

Plaintiff,

v.

NOTICE AND ORDER FINDING THAT
PLAINTIFF IS NOT ENTITLED TO PROCEED
IN FORMA PAUPERIS ON APPEAL FILED
AUGUST 15, 2012

WASCO STATE PRISON, et al.,

Defendants.

(ECF Nos. 106, 112)

ORDER DIRECTING CLERK’S OFFICE TO
SERVE COPY OF ORDER ON NINTH CIRCUIT

Plaintiff Thomas D. Braley (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On August 15, 2012, Plaintiff filed a notice of appeal. (ECF No. 106.) On September 9, 2012, the Ninth Circuit referred this matter to the district court for the limited purpose of determining whether in forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken in bad faith. (ECF No. 112.)

Pursuant to the Federal Rules of Appellate Procedure,

A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless:
(A) the district court - before or after the notice of appeal is filed - certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding;
or
(B) a statute provides otherwise.

Fed. R. App. P. 24(a)(3).

The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

- 1 (A) denies a motion to proceed on appeal in forma pauperis;
2 (B) certifies that the appeal is not taken in good faith; or
3 (C) finds that the party is not otherwise entitled to proceed in forma pauperis.

4 Fed. R. App. P. 24(a)(4).

5 Because Plaintiff was proceeding in forma pauperis in this action in the district court,
6 Plaintiff is entitled to proceed in forma pauperis on appeal unless the Court makes a finding to the
7 contrary. For the reason that follows, the Court finds that Plaintiff is not entitled to proceed in forma
8 pauperis on his appeal filed August 15, 2012.

9 In forma pauperis proceedings are governed by 28 U.S.C. § 1915. Section 1915(g) provides
10 that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on
11 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal
12 in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or
13 fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger
14 of serious physical injury.” Plaintiff became subject to section 1915(g) on November 17, 2008,
15 when the appeal of the dismissal of his third action as frivolous was dismissed for failure to
16 prosecute.¹ Because Plaintiff is subject to section 1915(g) and does not meet the imminent danger
17 exception, Plaintiff is not entitled to proceed in forma pauperis on appeal. Fed. R. App. P.
18 24(a)(4)(C).

19 Based on the foregoing, it is HEREBY ORDERED that:

- 20 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is not entitled to proceed in forma pauperis
21 on the appeal filed on August 15, 2012;
22 2. Pursuant to Federal Rule of Appellate Procedure 24(a)(4)(C), this order serves as
23 notice to the parties and the United States Court of Appeals for the Ninth Circuit of
24 the finding that Plaintiff is not entitled to proceed in forma pauperis for this appeal;

25 ¹ The Court takes judicial notice of the following cases: 2:01-cv-03867-GAF-MC Brale v. P. Bledsoe, et
26 al., (C.D.Cal.) (order adopting findings and recommendations issued October 31, 2001, and dismissing action for
27 failure to state a claim); 2:03-cv-04583-UA-SH Brale v. Rafael Mejia, (C.D.Cal.) (dismissed as frivolous on July
28 16, 2003) appeal dismissed, No. 03-56491 (9th Cir. April 12, 2004); and 2:08-cv-03633-UA-SH Brale v. Court of
Appeals, et al., (C.D.Cal.) (dismissed June 19, 2008, as frivolous) appeal dismissed, No. 08-56149 (9th Cir. Nov. 17,
2008). Plaintiff has also had 1:07-cv-01166-OWW-GSA Brale v. Los Angeles County Jail, (E.D.Cal.), dismissed
on March 12, 2009, for failure to state a claim. However, it appears that the appeal was never received by the Ninth
Circuit.

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and

3. The Clerk of the Court shall serve a copy of this order on Plaintiff and the United States Court of Appeals for the Ninth Circuit.

IT IS SO ORDERED.

Dated: September 14, 2012



CHIEF UNITED STATES DISTRICT JUDGE