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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHARLES T. DAVIS,
Plaintiff,

v.

CLARK J. KELSO, et. al.,
Defendants.

CASE NO. 1:10-cv-01184-LJO-GBC (PC)

ORDER FINDING THAT PLAINTIFF IS NOT
ENTITLED TO PROCEED IN FORMA
PAUPERIS ON APPEAL FILED JUNE 9, 2011
(Docs. 19, 26, 27, 28)

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

Charles T. Davis (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 12132 (Americans with Disabilities Act). On June 2, 2011, the District Court adopted the Magistrate Judge’s Findings and Recommendation to deny Plaintiff’s motions for injunctive relief based on Plaintiff’s failure to state a claim upon which relief may be granted. (Doc. 26). On June 9, 2011, Plaintiff filed a notice of appeal (Doc. 27) and on June 10, 2011, the Ninth Circuit referred 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. (Doc. 33).

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.

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

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

4 (A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

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

6 Because Plaintiff is proceeding in forma pauperis in this action, Plaintiff is entitled to proceed

7 in forma pauperis on appeal unless the Court finds his appeal is not taken in good faith or finds that

8 he is not otherwise entitled to proceed in forma pauperis. As Plaintiff has failed to state a claim upon

9 which relief may be granted, his appeal of the denial of his motions for injunctive relief is frivolous

10 and is not taken in good faith.

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

12 Plaintiff's appeal is frivolous and not taken in good faith. 28 U.S.C. § 1915(a). The Clerk's

13 Office shall serve a copy of this order on the Ninth Circuit.

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15 IT IS SO ORDERED.

16 **Dated: June 16, 2011**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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