

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LASHAWN BUTLER,

No. 04-2268 MMC

Plaintiff,

**ORDER DENYING PLAINTIFF'S  
APPLICATION TO PROCEED IN  
DISTRICT COURT WITHOUT  
PREPAYING FEES OR COSTS**

v.

NORDSTROM, INC.,

Defendant

Before the Court is plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs, filed March 17, 2009.

The above-titled action was removed to district court on June 6, 2004, and plaintiff was not required to pay a filing fee or any other fee at such time. Judgment was entered against plaintiff on August 25, 2005. Defendant did not seek to recover its costs, and, consequently, plaintiff was not found liable for any costs. On March 10, 2009, plaintiff filed a Notice of Appeal, but, to date, has not paid the \$455 fee required for said filing. Under such circumstances, the Court construes the instant application as an application to allow plaintiff to proceed in forma pauperis on appeal.

An application to proceed in forma pauperis on appeal must be denied if the appeal is "frivolous." See 28 U.S.C. § 1915(e)(2)(B)(i). A notice of appeal must be filed within 30 days of the date of entry of judgment. See Fed. R. App. P. 4(a)(1)(A); see also Browder v.

1 Director, Dep't of Corrections of Illinois, 434 U.S. 257, 264 (1978) (providing requirement  
2 that "notice of appeal in a civil case must be filed within 30 days of the judgment" is  
3 "mandatory"). Here, plaintiff filed the instant notice of appeal more than three years after  
4 entry of judgment. Under such circumstances, the notice of appeal is plainly untimely and,  
5 consequently, the appeal is frivolous.

6 Accordingly, plaintiff's application is hereby DENIED.

7 Plaintiff is hereby informed that she may file a motion to proceed on appeal in forma  
8 pauperis in the Ninth Circuit Court of Appeals. See Fed. R. App. Proc. 24(a)(5).

9 The Clerk of the Court is hereby DIRECTED to send a copy of this order to the Ninth  
10 Circuit Court of Appeals.

11 **IT IS SO ORDERED.**

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13 Dated: March 20, 2009

  
MAXINE M. CHESNEY  
United States District Judge

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