

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 12-cv-03231-PAB-KLM

DEAN CARBAJAL,

Plaintiff,

v.

ANDREW KEEFER, in his individual capacity,

Defendant.

ORDER

This matter comes before the Court on Plaintiff's Second Motion for Transcripts of the February 23, 2018 Evidentiary Hearing [Docket No. 359]. On February 23, 2018, the Court held an evidentiary hearing on the issue of whether plaintiff exhausted his administrative remedies. At the conclusion of that hearing, the Court found that he did not and, as a result, dismissed plaintiff's claims against defendant. Docket No. 331. Judgment entered. Docket No. 332. Plaintiff appealed. Docket No. 336. Because plaintiff is proceeding pro se, the Court construes his filings liberally. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Title 28 U.S.C. § 753(f) provides in relevant part that "[f]ees for transcripts furnished in [non-criminal and non-habeas] proceedings to persons permitted to appeal in forma pauperis shall . . . be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question)." A

substantial question is a significant issue that is unique, unusual or reasonably debatable. See *Evans v. City of Tulsa*, No. 91-5019, 1992 WL 2882 at *3 (10th Cir. Jan. 7, 1992) (unpublished). Thus, plaintiff is not entitled to free transcripts unless he has been allowed to proceed *in forma pauperis* on appeal and the appeal presents a significant issue that is unique, unusual, or reasonably debatable.

Plaintiff has not been granted leave to proceed *in forma pauperis* on appeal in this action. The Court has denied two motions filed by plaintiff seeking leave to proceed *in forma pauperis* on appeal that were deficient. Docket Nos. 343, 350. Plaintiff also has filed a motion seeking leave to proceed *in forma pauperis* on appeal in the Tenth Circuit and the Tenth Circuit has deferred consideration of the merits of the motion. Docket No. 341. Therefore, the motion for a free transcript will be denied.

In addition, even if plaintiff were granted leave to proceed *in forma pauperis* on appeal, the Court finds that he fails to demonstrate the existence of a significant issue that is unique, unusual, or reasonably debatable.

Wherefore, Plaintiff's Second Motion for Transcripts of the February 23, 2018 Evidentiary Hearing [Docket No. 359] is denied.

DATED October 22, 2018.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge