

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Civil Action No. 15-cv-02194-WYD

In Re: WILLIAM S. DENNEN,

Debtor,

WILLIAM S. DENNEN,

Appellant,

v.

WILLIAM HORLBECK, and
MADELINE DUNCAN,

Appellees.

ORDER GRANTING LEAVE TO PROCEED *IN FORMA PAUPERIS*

Debtor/Appellant, William S. Dennen, initiated this bankruptcy appeal by filing *pro se* a Notice of Appeal and Statement of Election (ECF No. 2), electing to have the appeal heard by the United States District Court. He is appealing from the Order Annuling the Automatic Stay entered by the United State Bankruptcy Court for the District of Colorado (Bankruptcy Court) in Bankruptcy Case No. 15-18255-HRT on September 29, 2015. The Court has jurisdiction over the appeal pursuant to 28 U.S.C. § 158(a)(1).

Mr. Dennen has filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (ECF No. 11). In the underlying proceeding, the Bankruptcy Court granted Mr. Dennen's "Application for Waiver of the Chapter 7 Filing Fee." See Case No. 15-18255-HRT, at Doc. # 5. However, Mr. Dennen did not ask

the Bankruptcy Court to waive the \$298.00 filing fee for purposes of this appeal. Instead, he filed a motion in this Court.

Pursuant to 28 U.S.C. § 158(c)(2), an appeal from a decision of the bankruptcy court to the district court “shall be taken in the same manner as appeals in civil proceedings generally are taken in to the courts of appeals from the district courts.” Accordingly, a party who has been granted leave to proceed *in forma pauperis* in the bankruptcy court may proceed *in forma pauperis* on appeal (in the district court) without further authorization unless the district court certifies that the appeal is not taken in good faith or determines that the party is not otherwise entitled to proceed *in forma pauperis*. See *Bernegger v. King*, 2011 WL 1743880, at *3 (E.D.Wis. May 6, 2011) (citing Fed. R.App. P. 24(a)); see also *In re Musil*, No. 91-3220, 1991 WL 202858 (10th Cir. Oct. 9, 1991) (unpublished) (stating that appellant seeking leave to appeal order of the bankruptcy court “must show both a financial inability to pay the required filing fees, and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal, citing 28 U.S.C. § 1915(a) and *Coppedge v. United States*, 369 U.S. 438 (1962)). The United States Bankruptcy Courts have likewise applied § 1915(a)(3) in denying motions to proceed *in forma pauperis* on appeal to the United States District Courts. See *In re Smith*, 499 B.R. 555, 556 (Bankr. E.D. Mich. July 8, 2013) (collecting cases); *in re Mark IV Industries*, 2012 WL 4096249 (S.D.N.Y. Sept. 18, 2012).

The Court finds that Mr. Dennen has demonstrated a financial inability to pay the \$298.00 filing fee and that one or more issues raised on appeal are not frivolous. Accordingly, it is

ORDERED that Mr. Dennen's Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (ECF No. 11) is **GRANTED**. It is

FURTHER ORDERED that in light of this Order, ECF No. 18 is **VACATED**.

Dated: January 11, 2016

BY THE COURT:

/s/ Wiley Y. Daniel

WILEY Y. DANIEL,
SENIOR UNITED STATES DISTRICT JUDGE