

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

**WILLIE PACE,**

Plaintiff,

v.

**HURST BOILER & WELDING CO.,**

Defendant.

Civil Action 7:10-CV-116 (HL)

**ORDER**

Currently before the Court is Plaintiff's Motion for Leave to Appeal In Forma Pauperis (Doc. 54). Plaintiff has filed a Notice of Appeal from the Court's order (Doc. 51) granting Defendant's Motion for Summary Judgment, and the Judgment (Doc. 52) entered in favor of Defendant.

Proceedings in forma pauperis are addressed in 28 U.S.C. § 1915(a), which authorizes the commencement of, among other things, an appeal without prepayment of fees. A court may allow a party to proceed on appeal without the prepayment of fees if he "submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1).<sup>1</sup> The statute further provides, however, that an appeal "may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28

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<sup>1</sup> "Despite the statute's use of the phrase 'prisoner possesses,' the affidavit requirement applies to all persons requesting leave to proceed IFP." Martinez v. Kristi Kleaners, Inc., 364 F.3d 1305, 1306 n. 2 (11th Cir. 2004).

U.S.C. § 1915(a)(3). Courts construing the “good faith” provision of § 1915(a)(3) have generally held that an appeal that is “not being pursued in good faith” is one that is frivolous from an objective standpoint. In re Arnold, 166 Fed. Appx. 424 (11th Cir. 2006); see also Ghee v. Retailers Nat. Bank, 271 Fed. Appx. 858, 859-60 (11th Cir. 2008).

Assuming that Plaintiff is being forthright with the Court that his unemployment benefits will end in early November, reducing his income to \$1,208 per month with expenses of \$2,097 per month, he has shown that he is unable to pay for the court fees and costs and also provide necessities for himself and his family. Nevertheless, based on the record, the Court does not believe that, objectively speaking, Plaintiff has presented a non-frivolous issue to be litigated on appeal. Accordingly, the Court certifies that Plaintiff’s appeal is not taken in good faith. Plaintiff’s Motion for Leave to Appeal In Forma Pauperis (Doc. 54) is denied. Plaintiff is advised to consult Rule 24(a)(5) of the Federal Rules of Appellate Procedure.

**SO ORDERED**, this the 28<sup>th</sup> day of October, 2011.

*s/Hugh Lawson*  
**HUGH LAWSON, SENIOR JUDGE**

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