

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

KERRY FARINA,)	
)	
)	
Plaintiff,)	
)	
v.)	13-CV-2109
)	
K. ANGLIN, et al.)	
)	
)	
Defendants,)	
)	

OPINION

SUE E. MYERSCOUGH, U.S. District Judge:

Plaintiff, proceeding pro se and currently incarcerated in Dixon Correctional Center, seeks leave to proceed in forma pauperis.

This is Plaintiff's second lawsuit filed in May 2013 challenging the dismissal by Judge McCuskey of Plaintiff's lawsuit filed in 2009, which asserted claims arising from Plaintiff's alleged rape in prison in 2008. Plaintiff appealed Judge McCuskey's dismissal, and the Seventh Circuit Court of Appeals affirmed Judge McCuskey in an

unpublished order dated April 18, 2011. Farina v. Anglin, et al., No. 10-1673 (7th Cir., 4/13/11 Order).

As the Court stated in Plaintiff's first lawsuit filed this month, Plaintiff cannot challenge Judge McCuskey's dismissal by filing a new case. The way to challenge Judge McCuskey's dismissal was to appeal the ruling to the Seventh Circuit Court of Appeals, which Plaintiff did. Another way to challenge Judge McCuskey's ruling was to file a motion before Judge McCuskey, which Plaintiff also did.

IT IS THEREFORE ORDERED:

1) Plaintiff's complaint is dismissed for failure to state a claim and as frivolous pursuant to Fed. R. Civ. P. 12(b)(6) and 28 U.S.C. § 1915A. This case is closed. The clerk is directed to enter a judgment pursuant to Fed. R. Civ. P. 58.

2) This dismissal shall count as one of the plaintiff's three allotted "strikes" pursuant to 28 U.S.C. Section 1915(g). The Clerk of the Court is directed to record Plaintiff's strike in the three-strike log.

3) Plaintiff has now accumulated three strikes pursuant to 28 U.S.C. Section 1915(g). This case counts as one strike and the other two cases counted as strikes are Farina v. Anglin, 10-CV-2084 (C.D. Ill., Judge Baker)(dismissed as frivolous) and Farina v. Anglin, 13-CV-2012 (C.D. Ill., Judge Myerscough)(dismissed as frivolous). Plaintiff may no longer bring a civil action in forma pauperis while he is a prisoner, unless he is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

4) Plaintiff must still pay the full docketing fee of \$350 even though his case has been dismissed. The agency having custody of Plaintiff shall continue to make monthly payments to the Clerk of Court, as directed in the Court's prior order.

5) If Plaintiff wishes to appeal this dismissal, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a). A motion for leave to appeal in forma pauperis should set forth the issues Plaintiff plans to present on appeal. See Fed. R. App. P. 24(a)(1)(C). If Plaintiff does choose to appeal, he will be liable for the \$455 appellate filing fee irrespective of the outcome of the appeal.

ENTERED: 6/13/2013

FOR THE COURT:

s/Sue E. Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE