

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RICHARD L. HOOD,  
Plaintiff,

v.

MENARD TACTICAL TEAM, et al.,  
Defendants.

Case No. 05-cv-214-JPG

**MEMORANDUM AND ORDER**

This matter comes before the Court on plaintiff Richard L. Hood’s motion for leave to appeal *in forma pauperis* and motion for appointment of counsel (Doc. 76). A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) & (3); Fed. R. App. P. 24(a)(3)(A). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O’Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

The judgment in this case was entered in favor of Hood but awarded no damages. It is true that a reasonable argument could be made that the proper disposition of this case would have been a judgment in favor of defendant Eugene McAdory on the basis that the allegations in Hood’s complaint, even if taken as true, did not amount to a constitutional violation. However, no reasonable person could argue that Hood was entitled to a monetary judgment of any amount, as Hood would presumably argue on appeal. Additionally, no reasonable person could argue that the dismissal of the other defendants pursuant to Federal Rule of Civil Procedure 4(m) for

failure to serve was not proper. Therefore, the Court **CERTIFIES** that Hood's appeal is not taken in good faith and accordingly **DENIES** the motion for leave to proceed on appeal *in forma pauperis* (Doc. 76).

To the extent the motion requests appointment of counsel, this Court does not have the authority to appoint counsel on appeal; only the Court of Appeals can make such appointments once a notice of appeal has been filed. Accordingly, the Court hereby **DIRECTS** the Clerk of Court to **TRANSFER** that portion of the pending motion (Doc. 76) to the Court of Appeals for the Seventh Circuit.

The Court **DIRECTS** the Clerk of Court to send a copy of this order to the Court of Appeals for the Seventh Circuit for its consideration in conjunction with Appeal No. 11-1528.

**IT IS SO ORDERED.**  
**DATED: March 10, 2011**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**