

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

WILLIAM O. SPIVEY,

Plaintiff,

vs.

SEAN FURLOW, *et. al.*,

Defendants.

Case No. 10-cv-689-JPG

**MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff's motions for leave to appeal *in forma pauperis* (Docs. 121 & 122). For the following reasons, the Court denies plaintiff's motions.

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). Here, the Court granted summary judgment against plaintiff for failure to exhaust his administrative remedies. No reasonable person could find that plaintiff exhausted his administrative remedies.

Further, a notice of appeal must be filed within thirty days from the entry of judgment. Fed. R. App. P. 4(a)(1). Judgment in this case was entered on May 14, 2012, and plaintiff did not file a notice of appeal until July 10, 2012. Accordingly, plaintiff failed to file his notice of appeal within the proper time frame.

For the foregoing reasons, the Court **DENIES** plaintiff's motions for leave to appeal *in forma pauperis* (Docs. 121 & 122).

**IT IS SO ORDERED.**

**DATED:** September 24, 2012

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