

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

JOSEPH DAVIS,

Plaintiff,

vs.

DR. JILL WAHL, et al.,

Defendant.

Case No. 10-cv-971-JPG

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff Joseph Davis' Motion to Proceed on Appeal In Forma Pauperis (Doc. 72). For the following reasons, the Court denies Davis' motion.

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 has not entered judgment in this case. However, on May 4, 2012, Defendant Dr. Shepherd filed a motion for summary judgment wherein he alleges that Davis failed to exhaust his administrative remedies. (Doc. 64 & 66). Then, on May 31, 2012, Davis filed his notice of appeal (Doc. 67) wherein he refers to grievances he filed against Dr. Shepherd. The Court infers that Davis intended to respond to Dr. Shepherd's motion for summary

judgment. Thus, because there is yet to be an issue that Davis can appeal, Davis' notice of appeal is frivolous.

Accordingly, the Court **DENIES** Davis' Motion to Proceed on Appeal In Forma Pauperis (Doc. 72).

IT IS SO ORDERED.

DATED: July 23, 2012

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