

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

CIPRIANO CARDENAS-URIARTE,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 14-cv-00747-JPG-PMF
)	
UNITED STATES OF AMERICA, et. al.)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Cipriano Cardenas-Uriarte's Motion (Doc. 27) to Appeal *in Forma Pauperis*.

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) and (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 Court has no doubt that the Plaintiff is indigent. However, Plaintiff is seeking review of a non-appealable order. 28 U.S.C. § 1915A requires that the court shall review a complaint in a civil action in which a prisoner seeks redress and dismiss the complaint or any portion of the complaint if it fails to state a claim upon which relief may be granted. The 28 U.S.C. § 1915A review in this matter dismissed portions of the complaint without prejudice and allowed Plaintiff to proceed on those portions of the complaint that stated a claim upon which relief could be granted. The Order (Doc. 8) did not dismiss the Plaintiff's case and is not an

appealable final decision of the District Court under 28 U.S.C. §1291. Further, the contents of the Order does not fall into any of the provisions of 28 U.S.C. §1292 for an interlocutory appeal.

The Court notes that, ordinarily, an appeal to the Court of Appeals “divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); accord *May v. Sheahan*, 226 F.3d 876, 879 (7th Cir. 2000). However, a deficient notice of appeal does not divest the district court of jurisdiction. *Gilda Indus. Inc. v. United States*, 511 F.3d 1348, 1350 (Fed. Cir. 2008). Where it is clear to the district court that a notice of appeal is deficient because it is untimely, lacks essential recitals, or seeks review of a non-appealable order, the district court may disregard the notice of appeal. *Id.* (citing *Ruby v. Secretary of U.S. Navy*, 365 F.2d 385, 389 (9th Cir. 1966) (*en banc*)).

Therefore, the Court **CERTIFIES** that this appeal is not taken in good faith and accordingly **DENIES** the motion for leave to proceed on appeal *in forma pauperis* (Doc. 27). It is further held that the notice of appeal is deficient as it seeks review of a non-appealable order. As such, the notice does not divest the district court of jurisdiction.

IT IS SO ORDERED.

DATED: 1/29/2015

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