

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CHARLES SCURLOCK,

Plaintiff,

v.

PENTHOUSE INTERNATIONAL
ENTERTAINMENT CONSULTANTS IEC,

Defendant.

Case No. 15-cv-338-JPG-DGW

MEMORANDUM AND ORDER

This matter comes before the Court on plaintiff Charles Scurlock's motion for leave to appeal *in forma pauperis* (Doc. 31). On receiving the motion, the Court was initially confused about whether Scurlock intended to appeal to the Court of Appeals for the Seventh Circuit or to appeal Magistrate Judge Wilkerson's order to the District Judge under 28 U.S.C. § 636(b)(1)(A). Scurlock has since clarified that he intended to appeal to the Court of Appeals (Doc. 36). The Court now turns to his motion for leave to appeal *in forma pauperis* (Doc. 31).

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 Court is satisfied from Scurlock's affidavit that he is indigent. However, the Court further finds that the appeal is not taken in good faith. Scurlock seeks to appeal Magistrate Judge

Wilkerson's decision not to recruit counsel to represent Scurlock in this case. That decision is not a final order and is not immediately appealable in an interlocutory appeal, *see Randle v. Victor Welding Supply Co.*, 664 F.2d 1064, 1067 (7th Cir. 1981) (*per curiam*), and therefore has no chance of success. Accordingly, the Court **DENIES** the motion for leave to proceed on appeal *in forma pauperis* (Doc. 31) and **DIRECTS** the Clerk of Court to send a copy of this order to the Court of Appeals for use in conjunction with Appeal No. 16-2414.

IT IS SO ORDERED.

DATED: July 11, 2016

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