

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

TIMOTHY WILSON, JR.,

Plaintiff,

vs.

ARTHUR STANLEY,

Defendant.

Case No. 15-cv-1315-SMY-SCW

**MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiff's Motion for Leave to Appeal in forma pauperis (Doc. 29) and Motion to Dismiss Notice of Appeal (Doc. 34). On January 26, 2016, the Court remanded this case back to state court in St. Clair County, Illinois (Doc. 26). Plaintiff filed his Notice of Appeal on January 29, 2016 (Doc. 28).

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 and 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 Plaintiff is indigent. However, the appeal is frivolous. An order remanding a case to state court based on a lack of subject-matter jurisdiction or defect in the removal procedure is not reviewable on appeal, regardless of whether the decision is correct.

See *Powerex Corp. v. Reliant Entergy Services, Inc.*, 551 U.S. 224 (2007). Accordingly, Plaintiff's Motion for Leave to Appeal *in forma pauperis* is **DENIED**.

Plaintiff also filed a Motion to Dismiss his Notice of Appeal which the Court construes as a Voluntary Dismissal of his Notice of Appeal pursuant to FRAP 42(a). Federal Rule of Appellate Procedure 42(a) provides that a District Court may dismiss an appeal before an appeal has been docketed by the circuit clerk. In this case, the Seventh Circuit Clerk docketed Plaintiff's appeal on February 1, 2016 (Doc. 32) and Plaintiff filed his Motion to Dismiss Notice of Appeal on February 5, 2016 (Doc. 34). Therefore, the Court cannot dismiss Plaintiff's Notice of Appeal. Accordingly, Plaintiff's Motion to Dismiss Notice of Appeal is **DENIED**.

**IT IS SO ORDERED.**

**DATE: April 18, 2016**

**s/ Staci M. Yandle**  
**STACI M. YANDLE**  
**DISTRICT JUDGE**