

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SAMUEL JOHNSON,

Plaintiff,

v.

CASE NO. 15-3154-SAC-DJW

BRIAN LEEDY, et al.,

Defendants.

ORDER

Plaintiff brings this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is currently incarcerated at the Montgomery County Jail in Independence, Kansas. The Court dismissed this action without prejudice. (Docs. 27, 28.) Plaintiff filed an appeal from that final order and judgment (Doc. 29). This matter is before the Court on Plaintiff's Motions for Leave to Appeal In Forma Pauperis (Docs. 33, 35 and 36).

Plaintiff's motions are governed by 28 U.S.C. § 1915(b). Because Plaintiff is a prisoner, he must pay the full appellate filing fee of \$505.00 in installment payments taken from his prison trust account when he "brings a civil action or files an appeal in forma pauperis[.]" *Id.* § 1915(b)(1). Pursuant to § 1915(b)(1), the court must assess, and collect when funds exist, an initial partial filing fee calculated upon the greater of (1) the average monthly deposit in his account or (2) the average monthly balance in the account for the six-month period preceding the filing of the notice of appeal. Thereafter, the plaintiff must make monthly payments of twenty percent of the preceding month's income in his institutional account. *Id.* § 1915(b)(2). However, a prisoner shall not be prohibited from bringing a civil action or appeal because he has no means to pay the initial partial filing fee. *Id.* § 1915(b)(4).

Plaintiff's trust fund account statement shows that he has insufficient funds to pay an initial partial filing fee. Although Plaintiff's claims were without merit, they were not so frivolous or unreasoned as to imply bad faith. *See Marshall v. Ormand*, 572 F. App'x 659, 662 (10th Cir. 2014) (unpublished) (citing 28 U.S.C. § 1915(a)(1) and (a)(3)).

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff's Motions for Leave to Appeal In Forma Pauperis (Docs. 33, 35 and 36) are **granted**. Installment payments shall proceed pursuant to 28 U.S.C. § 1915(b)(2) until Plaintiff satisfies the \$505.00 appellate filing fee.

Copies of this Order shall be transmitted to Plaintiff, the Clerk of the U.S. Court of Appeals for the Tenth Circuit, and the Finance Office of the facility where Plaintiff is incarcerated.

IT IS SO ORDERED.

Dated in Topeka, Kansas on this 4th day of April, 2017.

s/ Sam A. Crow
Sam A. Crow
Senior U. S. District Judge