

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

U.S. BANK NATIONAL CORPORATION

CIVIL ACTION

VERSUS

NO: 10-1990

FRANKLIN

SECTION: J(2)

ORDER

Before the Court is Defendant Tom Franklin's **Motion for Leave to Appeal In Forma Pauperis (Rec. Doc. 14)**. Defendant's motion fails for several reasons. First, his appeal is frivolous. Under 28 U.S.C. § 1915, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." See also Fed. R. App. P. 24. Appeals in frivolous suits are deemed to be in bad faith, and "[a]n [in forma pauperis] complaint may be dismissed as frivolous if it lacks an arguable basis in law or fact." Reeves v. Collins, 27 F.3d 174, 176 (5th Cir. 1994).

Plaintiff originally filed this suit in the 342nd Judicial District Court for Tarrant County, Texas. Defendant has attempted to remove the suit to this Court. The Court ordered that the

instant case be remanded, as Defendant's Notice of Removal "contained no jurisdictional allegation." (Report & Recommendation 1, Rec. Doc. 5.) Not only was did the Defendant fail to file for removal in the proper district (here, the Northern District of Texas), but he also did not address the Court's questions, specifically in reference to the citizenship of the Plaintiff, in his response to the Court's Order to Show Cause. (Rec. Doc. 4.)

Because Defendant has not provided the Court with any basis in law or fact for removal of this action from state court, his appeal is deemed frivolous. Moreover, orders to remand are "not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d)¹.

This Order is consistent with Court's previous Order (Rec. Doc. 7, adopting the Report & Recommendation), that pursuant to Fed. R. Civ. P. 11(c)(1), Mr. Franklin be assessed with all of the costs of the proceedings, including the filing fee that was previously waived when the Court granted his application to proceed in forma pauperis.


Furthermore, Defendant's motion is deficient. Defendant failed to sign his application to appeal in forma pauperis, and he did not fully fill out his application. If a section is

¹This statute contains one exception. The exception does not apply because this suit was not removed to the district "embracing the place wherein it is pending."

inapplicable, applicants should write "N/A." The second page of Defendant's application is blank except for his typed name and the date.

For the foregoing reasons, Defendant's **Motion for Leave to Appeal In Forma Pauperis (Rec. Doc. 14)** is hereby **DENIED**.

New Orleans, Louisiana this 27th day of September, 2010.



CARL J. BARBIER
UNITED STATES DISTRICT JUDGE