

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHN BARNES,

Plaintiff,

v.

Case No. 2:11-CV-14484

TOM COMBS, et. al.,

Defendants.

**ORDER CERTIFYING THAT ANY APPEAL OF COURT'S
ORDERS WOULD NOT BE IN GOOD FAITH**

Plaintiff John Barnes is a state prisoner currently incarcerated at the Thumb Correctional Facility in Lapeer, Michigan. On November 16, 2011, this court summarily dismissed Plaintiff's pro se civil rights complaint. (11/16/2011 Order, Dkt. # 3), and subsequently denied his Federal Rule of Civil Procedure 59 motion to alter or amend judgment. (1/25/2012 Order, Dkt. # 5.) On February 14, 2012, Plaintiff filed a notice of appeal, in which he seeks to appeal the denial of the motion to alter or amend judgment, and subsequently requested a determination that his appeal is undertaken in good faith. Pursuant to 28 U.S.C. § 1915(a)(3), the court certifies that any appeal from the court's order of summary dismissal or order denying Plaintiff's motion to alter or amend judgment would be frivolous and not taken in good faith.

Under § 1915(a)(3), "[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." Although "the question of whether the appeal is taken in good faith is irrelevant as to the assessment of fees"

because Plaintiff is a prisoner, the Sixth Circuit has nevertheless requested that district courts “make a certification under § 1915(a)(3) for all cases filed by prisoners and for all cases filed by non-prisoners seeking leave to proceed in forma pauperis on appeal.” *McGore v. Wrigglesworth*, 114 F.3d 601, 611-12 (6th Cir.1997), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199, 211-12 (2007). “In the absence of some evident improper motive, the applicant's good faith is established by the presentation of any issue that is not plainly frivolous.” *Ellis v. United States*, 356 U.S. 674, 674 (1958) (per curiam). In this case, for reasons stated in greater detail in the court’s November 16, 2011 order, the complaint does not set forth any arguable factual or legal basis upon which relief may be granted. Moreover, Plaintiff’s motion to alter or amend judgment did not identify any grounds requiring an alteration or amendment of the summary dismissal and merely restated Plaintiff’s belief that Defendants violated his constitutional rights. Accordingly, the court discerns no non-frivolous basis for an appeal of the court’s orders and CERTIFIES that any appeal of these orders is not taken in good faith.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: April 12, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 12, 2012, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522