

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

DEVONNE MARSH,

Plaintiff,

Case No. 14-12947

Honorable Victoria A. Roberts

v.

LEO RHODES and THE CITY
OF DETROIT,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO STRIKE [Doc. 72]
AND REQUIRING PLAINTIFF TO FILE A MOTION FOR LEAVE TO
PROCEED *IN FORMA PAUPERIS* ON APPEAL BY APRIL 17, 2017**

On January 25, 2017, the Court entered an order: (1) adopting Magistrate Judge David Grand's report and recommendation, recommending to grant Defendants' second motion to dismiss; (2) granting Defendants' second motion to dismiss; and (3) dismissing this case with prejudice. Plaintiff DeVonne Marsh filed a notice of appeal on February 22 without the filing fee. He now files an "affidavit" requesting to proceed *in forma pauperis* on appeal. [Doc. 71]. Marsh also filed a motion asking the Court to: (1) strike Defendants' second motion to dismiss, Magistrate Judge Grand's report and recommendation and the Court's January 25 order; and (2) address his objections to a separate report and recommendation submitted by Magistrate Judge Grand on April 21, 2016. [Doc. 72].

Marsh's motion to strike lacks merit and is improper. The Court will not strike Defendants' properly filed motion, the report and recommendation, or this Court's final order entered over seven weeks ago. To the extent his motion could be construed as a

motion for reconsideration, it is untimely and lacks any justification for relief. Moreover, the Court already overruled Marsh's objections to the April 21 report and recommendation in an order dated July 1, 2016. [See Doc. 42].

Marsh's motion to strike [Doc. 72] is **DENIED**.

In his affidavit seeking to proceed *in forma pauperis* on appeal, Marsh states that he does not have a job, has no money in his prisoner account, and "do[es] not own an automobile, any stocks, bonds, etc." This does not comply with the requirements to appeal *in forma pauperis*.

"If a prisoner wishes to proceed in forma pauperis on appeal, the prisoner must file in the district court, with the notice of appeal, a motion for leave to proceed in forma pauperis, a certified copy of a prison trust account statement, and Form 4 from the Appendix of Forms found in the Federal Rules of Appellate Procedure, or an affidavit which contains the same detailed information found in Form 4." *In re Prison Litig. Reform Act*, 105 F.3d 1131, 1135-36 (6th Cir. 1997) (administrative order). A prisoner granted pauper status before the district court is not automatically entitled to pauper status on appeal. *Id.* at 1136 (citations omitted).

Marsh filed an affidavit, but he failed to file a motion for leave to proceed *in forma pauperis* or a certified copy of his prison trust account statement showing the activity in his account for the previous six months. Moreover, the facts Marsh summarily alleged in his affidavit do not set forth all the information contained in Form 4 from the Appendix of Forms.

Accordingly, by **APRIL 17, 2017**, Marsh **MUST FILE**: (1) a motion for leave to proceed *in forma pauperis* on appeal; (2) a certified copy of his prison trust account

statement showing the activity in his account for the previous six months; and (3) either a completed Form 4 from the Appendix of Forms (a blank copy of which is attached to this order), or an affidavit which contains the same detailed information in the form.

Failure to timely submit these materials may result in the Court of Appeals dismissing the appeal with prejudice for failure to prosecute and with an assessment of the filing fee against Marsh. See *In re Prison Litig. Reform Act*, 105 F.3d at 1136 (“The district court shall inform the prisoner that should the prisoner not file the required documents within thirty (30) days, the court of appeals may dismiss the appeal for want of prosecution under Fed. R. App. P. 3(a) and in which case the district court will assess the entire filing fee. If dismissed under these circumstances, the appeal will not be reinstated despite the payment of the full filing fee or subsequent correction of the deficiency.”).

IT IS ORDERED.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: March 24, 2017

The undersigned certifies that a copy of this document was served on the attorneys of record and Devonne Marsah by electronic means or U.S. Mail on March 24, 2017.

s/Linda Vertriest
Deputy Clerk