

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMES J. HAMILTON,)	
)	
Plaintiff,)	
)	
v.)	No. 4:14-CV-766 CDP
)	
BROC GREMMINGER, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

Before the Court is plaintiff’s motion to withdraw his appeal without payment of the appellate filing fee. The Court will deny plaintiff’s motion.

The final judgment was filed in this case on May 25, 2017. Plaintiff filed his notice of appeal in this action on August 3, 2017, after resolution of the post-trial motions. The Eighth Circuit Court of Appeals remanded this action for the limited purpose of calculating and collecting the appellate filing fees on August 15, 2017. This Court initiated the appellate filing fees in this matter on October 23, 2017, after denying several requests by plaintiff to provide him with free transcripts of his trial for use on appeal.

Before the Court is plaintiff’s request to voluntarily dismiss his appeal in this matter due to his inability to pay for copies of his trial transcripts. Pursuant to Federal Rule of Appellate Procedure 42, the District Court may only dismiss an appeal before an appeal has been docketed by the circuit clerk.¹

Plaintiff’s case was docketed by the circuit clerk in the Court of Appeals on August 15, 2017. Therefore, this Court may not dismiss his case pursuant to Fed.R.App.P.42.

¹The Rule further provides that a stipulation of dismissal must be signed by all parties or the Court may dismiss upon the appellant’s motion with notice to all parties.

If plaintiff wishes to file his motion for voluntary dismissal in the Court of Appeals, he may do so in accordance with Fed.R.App.P.42(b). Pursuant to Rule 42(b):

the circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to withdraw his notice of appeal without payment of the appellate filing fee [Doc. #228] is **DENIED**.

Dated this 24th day of October, 2017.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE