

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

<b>PAUL CASTONGUAY, SR.,</b>	)	<b>CASE NO. 4:10CV3013</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
<b>JACK TAFF, and CATHY TAFF,</b>	)	
	)	
<b>Defendants.</b>	)	

This matter is before the court on Plaintiff's Notice of Appeal. (Filing No. [29](#).) Plaintiff has not paid the appellate filing fee and has filed a Motion for Leave to Proceed in forma pauperis ("IFP"). (Filing No. [30](#).) For the reasons discussed below, Plaintiff will not be permitted to appeal unless he pays the appellate filing fee.

On March 19, 2012, Plaintiff filed a Motion for Clarification regarding his filing fees. (Filing No. [27](#).) The court granted this Motion, explaining that [28 U.S.C. § 1915\(b\)\(2\)](#) requires monthly payments of 20 percent in *each* of his cases where a filing fee balance remains outstanding. (Filing No. [28](#).) Plaintiff subsequently filed a Notice of Appeal and a Motion for Leave to Proceed IFP. (Filing No. [29](#) and [30](#).)

Under the provisions of [28 U.S.C. § 1915\(g\)](#), a prisoner may not proceed in forma pauperis in a civil action, or on an appeal of a judgment in a civil action, if the prisoner has, on three or more occasions, while incarcerated, brought an action or appeal in federal court that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted. [28 U.S.C. § 1915\(g\)](#). An exception is made for prisoners who are under imminent danger of serious physical injury. *Id.* The court has

determined that Plaintiff brought three cases,<sup>1</sup> while incarcerated, that were dismissed because they failed to state a claim upon which relief could be granted.<sup>2</sup>

Plaintiff has not shown that these cases state a claim upon which relief may be granted, nor has he shown that he faces any danger of physical injury. Thus, Plaintiff is not entitled to proceed IFP on appeal. Moreover, Plaintiff has not paid the \$455.00 filing fee, and his appeal cannot be processed.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Leave to Proceed IFP (Filing No. [30](#)) is denied;
2. The Clerk of the court shall not process the appeal to the Eighth Circuit; and
3. The Clerk of the court is directed to forward a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

DATED this 12<sup>th</sup> day of March, 2013.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge

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<sup>1</sup> *Castonguay v. Douglas Cnty. Attorney Office*, No. 8:09CV392 (D. Neb.), dismissed on April 9, 2010. (Case No. 8:09CV392, Filing Nos. [11](#) and [12](#).) *Castonguay v. Douglas Cnty. Corr. Center*, No. 8:09CV225 (D. Neb.), dismissed on November 3, 2009. (Case No. 8:09CV225, Filing Nos. [14](#) and [15](#).) *Castonguay v. State of Neb.*, No. 8:09CV221 (D. Neb.), dismissed on November 3, 2009. (Case No. 8:09CV221, Filing Nos. [15](#) and [16](#).)

<sup>2</sup>The court takes judicial notice of the fact that Plaintiff has previously been informed of [§ 1915\(g\)](#)'s requirements. (See Case No. 4:10CV3207, Filing No. [20](#).)

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