

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CHARLES SWIFT,)	4:14CV3185
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
MEGAN LARMIE, and PAULETTE)	
MERRELL,)	
)	
Defendants.)	

This matter is before the court on Plaintiff Charles Swift’s (“Plaintiff”) notice of appeal (Filing No. [10](#)). The notice of appeal was not accompanied by the appellate filing fee. The court finds that pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), Plaintiff may not take this appeal in forma pauperis. See [Henderson v. Norris](#), 129 F.3d 481, 485 (8th Cir. 1997).

A litigant seeking to appeal a judgment must either pay the required filing fees, see [Fed. R. App. P. 3\(e\)](#), or proceed in forma pauperis pursuant to § 1915(a). Section 1915(a)(3) provides that “[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.” An appellant demonstrates good faith by seeking appellate review of any issue that is not frivolous. [Coppedge v. United States](#), 369 U.S. 438, 445 (1962); [Ellis v. United States](#), 356 U.S. 674, 674 (1958).

An appeal is frivolous where none of the legal points are arguable on their merits—when the result is obvious or the appellant’s argument is wholly without merit. See [Neitzke v. Williams](#), 490 U.S. 319, 325 (1989); [Misischia v. St. John’s Mercy Health Sys.](#), 457 F.3d 800, 806 (8th Cir. 2006). And while such a finding should be made only in extreme cases, it is proper when a party attempts to appeal from an order that is clearly not appealable. See [Cohen v. Curtis Publ’g Co.](#), 333 F.2d 974, 978-79 (8th Cir. 1964).

The order from which Plaintiff is attempting to appeal—the court’s order on initial review (Filing No. [9](#)) dated December 12, 2014—is clearly not appealable. The undersigned judge determined in that order that Plaintiff’s Complaint, in which he sought only monetary relief, failed to state a claim upon which relief can be granted. The court allowed Plaintiff 30 days in which to file an amended complaint. The order is not appealable because it neither qualifies as a “final decision[]” capable of appeal under [28 U.S.C. § 1291](#) nor comes within the narrow class of appealable interlocutory orders under [§ 1292\(a\)\(1\)](#).

Plaintiff was permitted to proceed in forma pauperis in this matter. Therefore, he could proceed on appeal in forma pauperis without further authorization, unless the court certifies that the appeal is not taken in good faith or finds that he is not otherwise entitled to proceed in forma pauperis. [Fed. R. App. 24\(a\)\(3\)](#). Because Plaintiff is attempting to appeal from an order that is not appealable, the court certifies that the appeal is not taken in good faith.

IT IS THEREFORE ORDERED that:

1. Plaintiff may not proceed on appeal in forma pauperis.
2. The clerk’s office is directed to provide a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

DATED this 29th day of December, 2014.

BY THE COURT:

s/ John M. Gerrard
United States District Judge

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