

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RONALD SATISH EMRIT,

Plaintiff,

vs.

JOHN A. GALE, Secretary of State of
Nebraska; and DEMOCRATIC PARTY
OF THE STATE OF NEBRASKA,

Defendants.

4:17CV3133

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's Notice of Appeal. ([Filing No. 18.](#)) For the reasons set forth below, the court finds that pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), Plaintiff may not take this appeal in forma pauperis.

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 when none of the legal points are arguable on their 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. 15](#)) dated January 29, 2018—is clearly not appealable.¹ The order does not qualify as a “final decision[.]” capable of appeal under 28 U.S.C. § 1291. In addition, the order does not fall within the narrow class of appealable interlocutory orders under § 1292(a).

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 of the court is directed to provide a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

Dated this 20th day of February, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge

¹ In his Notice of Appeal, Plaintiff states he is filing this appeal “specifically because of the fact that the plaintiff has missed deadlines to respond to previous documents which he has never received.” ([Filing No. 18 at CM/ECF p.3.](#)) However, Plaintiff has not missed any deadlines imposed by this court. The court ordered Plaintiff to file an amended complaint within 30 days of its January 29, 2018 order on initial review, and such deadline does not expire until February 28, 2018. (*See* [Filing No. 15.](#)) The court also notes Plaintiff’s address was updated on December 11, 2017, per Plaintiff’s instructions. (*See* [Filing No. 14.](#))