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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MICHAEL FOLEY,

Plaintiff(s),

v.

MICHELLE PONT, et al.,

Defendant(s).

Case No. 2:11-CV-1769 JCM (VCF)

ORDER

Presently before the court is a referral notice from the Ninth Circuit. (Doc. # 184).

Plaintiff sued numerous defendants, including family members and child protective services (“CPS”) employees, for deprivations of his constitutional rights. (Doc. # 55). Plaintiff alleged that defendants conspired against him to remove his children from his custody following a CPS investigation. (Doc. # 55).

On November 3, 2011, plaintiff filed a motion for leave to proceed in forma pauperis. (Doc. # 1). On November 4, 2011, Magistrate Judge Ferenbach granted the motion allowing plaintiff to proceed in forma pauperis. (Doc. # 2).

On October 18, 2012, the court granted motions to dismiss a number of defendants with prejudice. (Doc. # 134). Plaintiff filed a motion to reconsider, (doc. # 136), which the court denied, (doc. # 160). Plaintiff then filed another motion to reconsider, (doc. # 161), which the court also denied, (doc. # 168).

On July 17, 2013, plaintiff attempted to appeal the court’s order on his motion to reconsider. (Doc. # 169). The appeal was dismissed for lack of jurisdiction because the order was not final. (Doc. # 172).

...

...

1 On July 9, 2014, the clerk's office provided notice to counsel pursuant to local rule 41-1
2 that if no action was taken in the case within 30 days, the court would dismiss the case for want
3 of prosecution. (Doc. # 178).

4 On August 13, 2014, plaintiff filed an ex parte "notice of intent to continue litigation,"
5 stating that he was incarcerated and thus unable to proceed against defendants due to his
6 confinement. (Doc. # 179).

7 On August 18, 2014, the court dismissed the case without prejudice for want of
8 prosecution. (Doc. # 180). On September 16, 2014, plaintiff appealed the order of dismissal.
9 (Doc. # 182).

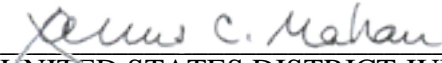
10 On September 17, 2014, the Ninth Circuit referred this matter to the district court for the
11 limited purpose of determining whether in forma pauperis status should continue for plaintiff's
12 appeal. (Doc. # 184). Revocation of in forma pauperis status is appropriate where the district
13 court certifies that the appeal is frivolous or not taken in good faith. 28 U.S.C. § 1915(a)(3).¹

14 The court finds that the appeal is not taken in good faith and that it is frivolous. This
15 court dismissed plaintiff's claims for want of prosecution. "Failure to follow a district court's
16 local rules is a proper ground for dismissal." *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, in response to the
19 Ninth Circuit's referral notice, (doc. # 184), the court certifies that the appeal is frivolous and not
20 taken in good faith.

21 DATED October 1, 2014.

22 
23 _____
24 UNITED STATES DISTRICT JUDGE

25
26 _____
27 ¹ The appellate court, however, may grant in forma pauperis status on appeal. See
28 *O'Neal v. Price*, 531 F.3d 1146, 1149 (9th Cir. 2008) ("[S]ubsections (a)(4) and (5) of Rule 24 of
the Federal Rules of Appellate Procedure give litigants a procedural route for challenging the
trial court's certification.").