

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

MATTHEW JAMES GRIMES,

Plaintiff,

v.

No. 1:23-cv-00581-WJ-KK

KATRINA WATS,  
SHELLPOINT MORTGAGE,  
JOE MCSHERRY,  
BERNALILLO COUNTY SHERIFF'S DEPARTMENT  
and its agents and special master, and  
ALBUQUERQUE POLICE DEPARTMENT  
and its agents and special master,

Defendants.

**MEMORANDUM OPINION AND ORDER DENYING**  
**MOTION FOR LEAVE TO APPEAL *IN FORMA PAUPERIS***

Plaintiff, who is proceeding *pro se*, asserted claims for alleged due process violations arising from a foreclosure action in state court and the eviction of Plaintiff from his home. *See* Complaint for Violation of Civil Rights at 4-5, Doc. 1, filed July 10, 2023. The Court dismissed this case without prejudice because the Amended Complaint failed to state a claim upon which relief can be granted. *See* Doc. 9, filed July 28, 2023.

Plaintiff, who is proceeding *pro se*, filed a Notice of Appeal and sought leave to appeal *in forma pauperis* using a form for the Court of Appeals of the State of New Mexico. *See* Notice of Appeal, Doc. 15, filed September 6, 2023; Application for Free Process and Affidavit of Indigency, Doc. 16, filed September 6, 2023 (“Application”). Plaintiff indicates that “I am married, and my spouse is employed” but does not provide the amount his spouse is paid. Application at 4. Plaintiff also does not provide information regarding his expenses and did not sign the Application as required by Rule 11(a) of the Federal Rules of Civil Procedure. *See* Application at 6, 8.

United States Magistrate Judge Kirtan Khalsa ordered Plaintiff to file a motion for leave to appeal *in forma pauperis* using the appropriate Tenth Circuit form, “Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (non-PLRA)” (“Tenth Circuit form”), and directed the Clerk to send the Tenth Circuit form to Plaintiff. *See* Doc. 20, filed September 8, 2023. The Tenth Circuit form prompts the appellant to state their issues on appeal and directs appellant to provide information regarding their expenses and their spouse’s financial information. Judge Khalsa notified Plaintiff that failure to timely file the Tenth Circuit form may result in denial of Plaintiff’s request for leave to appeal *in forma pauperis*. Plaintiff did not file a “Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (non-PLRA)” by the September 29, 2023, deadline. Plaintiff filed a Notice which states Plaintiff “ha[s] given all Parties my SECURITY AGREEMENT Non-Negotiable Private Agreement with my Legal Notice and Demand which has been IGNORED By all Parties.” Doc. 21, filed September 18, 2023 (with 25 pages of documents attached) (emphasis in original). Plaintiff’s Notice does not provide any financial information showing Plaintiff is unable to pay the costs and fees of his appeal. Plaintiff provided a personal check in the amount of \$505 for the appeal filing fee, but the \$505 was not deposited due to insufficient funds. *See* Doc. 22, filed September 26, 2023.

“In order to succeed on [a motion for leave to proceed on appeal without prepayment of costs or fees], an appellant must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991). “An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “The Supreme Court has held that good faith is to be judged by an objective standard, for review of any issue ‘not frivolous.’” *Spearman v. Collins*, 500 Fed.Appx.

742, 743 (10th Cir. 2012) (citing *Coppedge v. United States*, 369 U.S. 438, 445 (1962)). “An appeal is frivolous when the result is obvious, or the appellant’s arguments of error are wholly without merit.” *Id.*; see also *Thompson v. Gibson*, 289 F.3d 1218, 1222 (10th Cir. 2002) (“an appeal is frivolous if it lacks an arguable basis in either law or fact”).

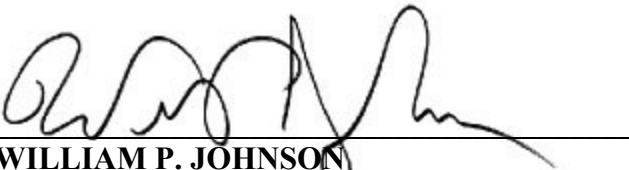
Plaintiff has not shown a financial inability to pay the required filing fees because the state-court form that he filed does not show his expenses or his spouse’s income and Plaintiff did not file the appropriate Tenth Circuit form, “Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (non-PLRA)”.

Plaintiff has also not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal. Plaintiff’s Notice of Appeal does not identify the issues Plaintiff is raising on appeal and does not set forth any argument of error regarding the Court’s decision.

The Court concludes that Plaintiff’s appeal is not taken in good faith and that his request for leave to appeal *in forma pauperis* must be denied because he has not identified “the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *DeBardeleben*, 937 F.2d at 505.

**IT IS ORDERED** that Plaintiff’s Application for Free Process, Doc. 16, filed September 6, 2023, is **DENIED**.

**THE COURT CERTIFIES** that Plaintiff’s appeal is not taken in good faith.

  
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**WILLIAM P. JOHNSON**  
**CHIEF UNITED STATES DISTRICT JUDGE**