

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

SIMON ARMIJO,

Plaintiff,

vs.

No. CIV 14-0362 JB/CG

RONY D. HAYES; LARRY CEARLY;
ROBERT GRIEGO and VILLAGE OF
MAGDALENA,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Plaintiff's Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (non-PLRA), filed December 5, 2017 (Doc. 117)("Motion for Leave to Appeal IFP"). The Court will deny Plaintiff Simon Armijo's Motion for Leave to Appeal IFP, because he has not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal. The Court will certify that Armijo's appeal is not taken in good faith, because his argument of error is without merit.

PROCEDURAL BACKGROUND

Armijo filed his Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, filed April 16, 2014 (Doc. 2)("Complaint"), against the four Defendants on April 16, 2014. On March 11, 2016, the Court dismissed with prejudice all claims against Defendant Rony D. Hays and dismissed with prejudice the malicious prosecution claim against Defendant Robert Griego. See Armijo v. Hayes, No. CIV 14-0362, 2016 WL 1169310, at *9 (D.N.M. Mar. 11, 2016)(Browning, J.); Memorandum Opinion and Order at 17-18, filed March 11, 2016 (Doc. 76). On March 15, 2016,

the Court dismissed with prejudice all claims against Defendants Larry Cearly and the Village of Magdalena. See Armijo v. Hayes, No. CIV 14-0362, 2016 WL 1158068, at *11 (D.N.M. Mar. 15, 2016)(Browning, J.); Memorandum Opinion and Order at 23, filed March 14, 2016 (Doc. 77). On September 30, 2017, the Court granted Defendant Robert Griego's Motion for Summary Judgment on the Basis of Qualified Immunity, dismissing all claims against Griego with prejudice. See Armijo v. Hays, No. CIV 14-0362, 2017 WL 4358701, at *4 (D.N.M. Sept. 30, 2017) (Browning, J.); Memorandum Opinion and Order Adopting the Magistrate Judge's Proposed Findings and Recommended Disposition at 7, filed September 30, 2017 (Doc. 108).

On November 29, 2017, Armijo filed his Notice of Appeal. See Notice of Appeal, filed November 28, 2017 (Doc. 113). The Notice of Appeal states that Armijo appeals the orders and judgments entered on September 30, 2017, and March 15, 2016. See Notice of Appeal at 1. The Notice of Appeal does not identify any issues Armijo seeks to appeal. On December 5, 2017, Armijo filed his Motion for Leave to Appeal IFP using the form "Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (non-PLRA)." Where that form prompts the appellant to identify his "issues on appeal," Armijo wrote: "Affidavit for search warrant, search warrant." Motion for Leave to Appeal IFP at 2.

LAW REGARDING LEAVE TO APPEAL IN FORMA PAUPERIS

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.

DeBardeleben 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 F. App’x 742, 743 (10th Cir. 2012)¹(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.” Spearman v. Collins, 500 F. App’x at 743. See Thompson v. Gibson, 289 F.3d 1218, 1222 (10th Cir. 2002)(stating that “an appeal is frivolous if it lacks an arguable basis in either law or fact”).

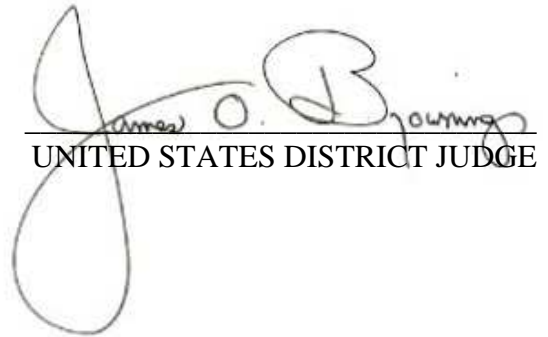
ANALYSIS

The Court will deny Armijo’s Motion for Leave to Appeal IFP, because Armijo has not shown “the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991). The only issue Armijo raises on appeal is: “Affidavit for search warrant, search warrant.” Motion for Leave to Appeal IFP at 2. Armijo does not identify any issues on appeal in his Notice of Appeal.

The Court will certify that Armijo’s appeal is not taken in good faith, because he does not assert any argument of error or offer legal authority to support his appeal.

¹Spearman v. Collins is an unpublished opinion, but the Court can rely on an unpublished United States Court of Appeals for the Tenth Circuit opinion to the extent its reasoned analysis is persuasive in the case before it. See 10th Cir. R. 32.1(A), 28 U.S.C. (“Unpublished opinions are not precedential, but may be cited for their persuasive value.”). The Tenth Circuit has stated: “In this circuit, unpublished orders are not binding precedent, . . . and . . . citation to unpublished opinions is not favored However, if an unpublished opinion . . . has persuasive value with respect to a material issue in a case and would assist the court in its disposition, we allow a citation to that decision.” United States v. Austin, 426 F.3d 1266, 1274 (10th Cir. 2005). The Court concludes that Spearman v. Collins has persuasive value with respect to a material issue, and will assist the Court in its preparation of this Memorandum Opinion and Order.

IT IS ORDERED that: (i) Plaintiff's Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (non-PLRA), filed December 5, 2017 (Doc. 117), is denied; and (ii) the Court certifies that Plaintiff Simon Armijo's appeal is not taken in good faith.



UNITED STATES DISTRICT JUDGE

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