

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

HERBERT AMEEN MUHAMMAD

Plaintiff,

VS.

W.K. NEWELL, ET AL.

Defendants.

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NO. 3-08-CV-1426-BD

MEMORANDUM ORDER

Plaintiff Herbert Ameen Muhammad, a Texas prisoner, has filed a motion to proceed *in forma pauperis* on appeal. For the reasons stated herein, the court finds that plaintiff is indigent but certifies that his appeal is not taken in good faith.

In this civil action, plaintiff sued the City of Terrell, Texas and one of its police officers, W.K. Newell, for malicious prosecution, false arrest, and false imprisonment under federal and Texas law, and for assault and intentional infliction of emotional distress under Texas law. The federal claims against the City and the state claims against Newell were dismissed at the pleading stage. *Muhammad v. Newell*, No. 3-08-CV-1426-BD, 2009 WL 559931 (N.D. Tex. Mar. 4, 2009). The other claims were dismissed on summary judgment. *Muhammad v. Newell*, No. 3-08-CV-1426-BD, 2009 WL 2482142 (N.D. Tex. Aug. 12, 2009). A final judgment was entered on August 13, 2009. Seven months later, on March 18, 2010, plaintiff filed a notice of appeal. Plaintiff now seeks leave to proceed *in forma pauperis* on appeal.

The standards governing *in forma pauperis* motions are set forth in 28 U.S.C. § 1915(a). The motion must state "the nature of the action, defense or appeal and affiant's belief that [he] is entitled

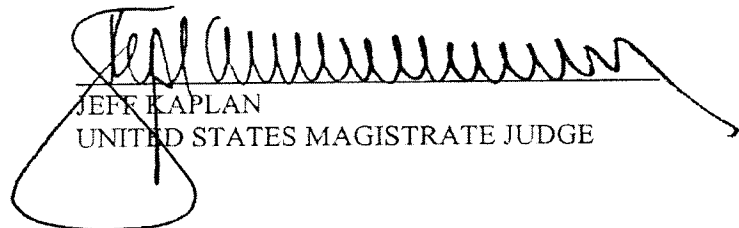
to redress." 28 U.S.C. § 1915(a). The district court may deny leave to proceed *in forma pauperis* if an appeal is not taken in good faith. *Ruston v. Dallas County, Tex.*, 320 Fed.Appx. 262, 263, 2009 WL 928191 at *1 (5th Cir. Apr. 7, 2009), *cert. disp'd*, 130 S.Ct. 267 (2009). An appeal is taken in good faith if it presents an arguable issue on the merits and therefore is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 921, 8 L.Ed.2d 21 (1962); *Howard v. King*, 707 F.2d 215, 219 (5th Cir. 1983). A movant must demonstrate the existence of a non-frivolous issue for appeal. *See also Payne v. Lynaugh*, 843 F.2d 177, 178 (5th Cir. 1988).

The information submitted by plaintiff shows that he lacks the financial resources to pay the costs of an appeal. However, such an appeal is patently frivolous. For the reasons set forth in the March 4, 2009 order granting defendants' partial motion to dismiss and the August 12, 2009 order granting defendants' motion for summary judgment, plaintiff has failed to present an arguable issue on the merits with respect to any of his claims against defendants. The court therefore certifies that this appeal is not taken in good faith. *See* 28 U.S.C. § 1915(a)(3).¹

Plaintiff's motion to proceed *in forma pauperis* on appeal [Doc. #72] is denied. If plaintiff wishes to challenge this ruling, he must file a separate motion to proceed *in forma pauperis* with the clerk of the United States Court of Appeals for the Fifth Circuit within 30 days of the date of this order. *See Baugh v. Taylor*, 117 F.3d 197 (5th Cir. 1997).

SO ORDERED.

DATED: April 27, 2010.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

¹ The court also notes that plaintiff's appeal, which was perfected more than seven months after the judgment was entered, is untimely. *See* FED. R. APP. P. 4(a)(1)(A) (notice of appeal must be filed within 30 days after judgment is entered).