

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

<b>CLYDE JOE PARKER,</b>	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>C.A. NO. C-06-434</b>
	§	
<b>KELLI WARD, ET AL.,</b>	§	
<b>Defendants.</b>	§	

**MEMORANDUM OPINION AND ORDER DENYING WITHOUT PREJUDICE  
MOTIONS TO FORWARD THE RECORD AND FOR PREPARATION OF  
TRANSCRIPTS AT PUBLIC EXPENSE**

Plaintiff, a prisoner proceeding *pro so* and *in forma pauperis* filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging various constitutional violations. Summary judgment in favor of defendants was entered September 1, 2009 (D.E. 218). Final judgment was entered the same day (D.E. 219). Plaintiff timely filed notice of appeal on September 28, 2009 (D.E. 222). Plaintiff's application for leave to proceed on appeal *in forma pauperis* has been filed, but he has not yet filed a copy of his inmate trust account statement. Pending are plaintiff's motions (1) for the reporter's record (D.E. 226); and (2) for an extension of time to file a transcript order and for preparation of transcripts at the expense of the United States (D.E. 228, 229).

Plaintiff's request that the record be forwarded to the Fifth Circuit (D.E. 226) is denied without prejudice because plaintiff has not yet completed his *in forma pauperis* application, which lacks his inmate trust fund balance sheet. Plaintiff need not re-file this motion, however, because once he has been granted leave to proceed *in forma pauperis*, the record will be prepared and forwarded by the Clerk to the Fifth Circuit. No further motion

need be filed by the plaintiff.

Plaintiff's motions for transcripts and for an extension of time to file a transcript order (D.E. 228, 229) are denied without prejudice, again because plaintiff has not yet been granted leave to proceed *in forma pauperis* on appeal. Even if plaintiff is granted leave to proceed *in forma pauperis* on appeal, he is not necessarily entitled to the preparation of free transcripts. Fees for transcripts furnished to persons permitted to appeal in forma pauperis shall be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question). 28 U.S.C. § 753(f). Payment by the United States for printing of the record on appeal and transcripts may also be ordered if the record or transcript is **required** by the appellate court. 28 U.S.C. § 1915(c); Harvey v. Andrist, 754 F.2d 569, 571 (5th Cir.), cert. denied, 471 U.S. 1126, 105 S.Ct. 2659 (1985). In this case plaintiff has not set forth the issues he plans to raise on appeal; therefore a decision cannot be made as to whether the appeal is frivolous. The Fifth Circuit Court of Appeals has not indicated that it required a transcript of any of the proceedings in this case. Moreover, the case was resolved on summary judgment, and plaintiff has not demonstrated why any transcripts would be necessary to brief and argue any points of error to the Fifth Circuit Court of Appeals.

ORDERED this 20th day of October, 2009.

A handwritten signature in cursive script, appearing to read "B. Janice Ellington", is written over a horizontal line.

B. JANICE ELLINGTON  
UNITED STATES MAGISTRATE JUDGE