

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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EDDIE GENE EVANS,

Plaintiff,

v.

RICK RAEMISCH, *et al.*,

Defendants.

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ORDER

13-cv-421-wmc  
App. No. 14-3527

Judgment was entered in this case on November 7, 2014 after the court dismissed plaintiff Eddie Evan's complaint with prejudice for failure to state a claim. Evans has now filed a notice of appeal. (Dkt. # 12). Evans has not paid the \$505 appellate docketing fee, so this court construes Evan's appeal to include a request for leave to proceed on appeal *in forma pauperis*. That request will be denied.

In determining whether a litigant is eligible to proceed *in forma pauperis* on appeal, the court must find that he is indigent and, in addition, that the appeal is taken in good faith for purposes of Fed. R. App. P. 24(a)(3). *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith."). Although Evans has been found eligible to proceed as an indigent litigant previously in this case, the court cannot certify that the appeal is taken in good faith. In that respect, the United States Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a plaintiff is appealing claims that have been dismissed as frivolous. *See Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). To the extent that Evans is attempting to raise on appeal the claims he raised in his complaint, the court certifies that the appeal is not

taken in good faith for purposes of Fed. R. App. P. 24(a)(3). Accordingly, his request for leave to proceed *in forma pauperis* on appeal must be denied.

## ORDER

IT IS ORDERED that:

1. The court CERTIFIES that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3).
2. Plaintiff Eddie G. Evans request for leave to proceed *in forma pauperis* is DENIED.
3. Although this court has certified that the appeal is not taken in good faith under Fed. R. App. P. 24(a)(3), Evans is advised that he may challenge this finding pursuant to Fed. R. App. P. 24(a)(5), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Seventh Circuit, within twenty (20) days of the date of this order.

Entered this 18th day of November, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge