

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

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EDWARD MAX LEWIS,

Plaintiff,

v.

LEON STENZ, *et al.*,

Defendants.

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ORDER

14-cv-446-wmc  
App. No. 15-1808

Judgment was entered in this case on March 30, 2015 after the court dismissed plaintiff Edward Max Lewis's complaint with prejudice as legally frivolous. Lewis has now filed a notice of appeal. (Dkt. # 15). He has not paid the \$505 appellate docketing fee, so this court construes Lewis'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 Lewis 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 Lewis 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 Edward Max Lewis's 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), Lewis 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 thirty (30) days of the date of this order. With that motion, he must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), along with a certified inmate trust fund account statement and a statement of issues he intends to argue on appeal. Also, he must send along a copy of this order. Plaintiff should be aware that he must file these documents in addition to the notice of appeal he has filed previously.

Entered this 21st day of April, 2015.

BY THE COURT:

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WILLIAM M. CONLEY  
District Judge