

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

MICHAEL E. FLOURNOY,

Plaintiff,

v.

ORDER

14-cv-528-jdp
App. No. 15-1728

WINNEBAGO COUNTY SHERIFF'S OFFICE,
ROBERT BOB BAUDELIO JUANEZ,
LARRY MARINO, DANIEL FREEDLUND,
PETER DALPRA, JOSEPH BOOMER,
BRAD KISER, IASPARRO DOMINC,
CUNNINGHAM NICK, JULIE DODD,
NEAL C. GRUHN, WAYNE JACKOWSKI,
CRAIG SMITH, ADAM KING,
JOHN D. RICHARDSON, and DAN IVANCICH,

Defendants.

Judgment was entered in this case on March 10, 2015, after I dismissed pro se plaintiff Michael Flournoy's complaint for failure to state a claim upon which relief can be granted. Dkt. 15 and Dkt. 16. Plaintiff moved for reconsideration of my order dated March 23, 2015, which I denied. Dkt. 18 and Dkt. 19. Now, plaintiff has filed a notice of appeal. Dkt. 20. Because plaintiff has not paid the \$505 fee for filing an appeal, I construe his notice as a request for leave to proceed *in forma pauperis* on appeal.

Under 28 U.S.C. § 1915, a district court may deny a request for leave to proceed *in forma pauperis* for one or more of the following reasons: the litigant wishing to take an appeal has not established indigence; the appeal is not taken in good faith; or the litigant is a prisoner and has three strikes. *Sperow v. Melvin*, 153 F.3d 780, 781 (7th Cir. 1998). I will deny plaintiff's request for leave to proceed *in forma pauperis* on appeal because I am certifying

that his appeal is not taken in good faith. The Seventh Circuit has instructed district courts to find bad faith in cases in which a plaintiff is appealing the same claims that the court has already found to be without legal merit. *Lee v. Clinton*, 209 F.3d 1025, 1027 (7th Cir. 2000); *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982) (per curiam). Here, plaintiff is trying to appeal the same claims on which I denied him leave to proceed. But he has not shown any legally meritorious basis for his appeal. Therefore, although I do not conclude that plaintiff is motivated by any ill will, I must certify that the appeal is not taken in good faith.

Because I am certifying that plaintiff's appeal is not taken in good faith, he cannot proceed with his appeal without prepaying the \$505 filing fee, unless the court of appeals gives him permission to do so. Under Federal Rule of Appellate Procedure 24, plaintiff has 30 days from the date of this order to ask the court of appeals to review this court's denial of leave to proceed *in forma pauperis* on appeal. Plaintiff must include with his motion an affidavit as described in the first paragraph of Rule 24(a), with a statement of the issues that he intends to argue on appeal. Also, he must submit a copy of this order. Plaintiff should be aware that he must file these documents in addition to the notice of appeal that he has previously filed. If he does not file a motion requesting review of this order, the court of appeals may choose not to address the denial of leave to proceed *in forma pauperis* on appeal. Instead, it may require plaintiff to pay the full \$505 filing fee before it considers his appeal further. If he does not pay the fees within the deadline set, it is possible that the court of appeals will dismiss plaintiff's appeal.

Finally, in his notice of appeal, plaintiff requests assistance in recruiting counsel for appeal. Plaintiff's motion is not properly raised in this court. If he wishes to be appointed

counsel on appeal, he will have to make his request directly to the Court of Appeals for the Seventh Circuit.

ORDER

IT IS ORDERED that:

1. Plaintiff Michael Flournoy's motion for leave to proceed *in forma pauperis* on appeal, Dkt. 20, is DENIED. I certify that his appeal is not taken in good faith.
2. The clerk of court is directed to ensure that plaintiff's obligation to pay the \$505 fee for filing his appeal is reflected in the court's financial records.
3. Plaintiff's request for assistance in recruiting counsel for appeal is DENIED without prejudice to his refileing it with the court of appeals.

Entered April 15, 2015.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge