

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

EUGENE L. CHERRY,

Petitioner,

v.

JON LITSCHER, GERALD BERGE,
JIM PARISI, SGT. MASON,
PAM BARTELS, DR. KIM, RON REIMER,
KATHRYN McQUILLAN, VICKI SHARPE,
KAREN SOLOMON, JOHN SHARPE,

Respondents.

ORDER

02-C-394-C

Plaintiff Eugene Cherry has filed a notice of appeal from an order of this court denying his motion for a preliminary injunction. Because plaintiff's notice of appeal is not accompanied by the \$105 fee for filing an appeal, I construe the notice to include a request for leave to proceed in forma pauperis on appeal.

Because plaintiff is a prisoner, he is subject to the 1996 Prison Litigation Reform Act. This means that I must determine whether his appeal is barred because he has three strikes against him under 28 U.S.C. § 1915(g) or whether it must be certified as not having been taken in good faith.

Although the denial of a preliminary injunction is appealable under 28 U.S.C. § 1292(a)(1), I conclude that plaintiff's appeal is not taken in good faith because it is legally frivolous. See Moran v. Sondalle, 218 F.3d 647, 651 (7th Cir. 2000). Plaintiff's motion for a preliminary injunction requested

immediate transfer to another correctional facility because he was not receiving adequate medical care. However, plaintiff made no showing that he was in any immediate danger or that transfer to another facility was necessary to remedy the alleged harm. Because his appeal is not taken in good faith, plaintiff must pay the \$105 fee for filing the appeal immediately. He cannot take advantage of the partial payment provision of 28 U.S.C. § 1915.

ORDER

IT IS ORDERED THAT plaintiff Eugene Cherry's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that this appeal is not taken in good faith.

If plaintiff intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P.

24(a) and a copy of this order.

Entered this 24th day of September, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge