

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

EUGENE L. CHERRY ,

Plaintiff,

v.

GERALD BERGE, CINDY SAWINSKI,
JOLENE MILLER, JOLINDA WATERMAN,
TIM HAINES, PATTI BOEBEL, and DR. SAFARI,

Defendants.

ORDER

02-C-544-C

Judgment was entered in this case on June 27, 2003, granting defendants' motion for summary judgment. On July 3, 2003, plaintiff filed a timely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) as well as a notice of appeal. Fed. R. App. P. 4(a)(4) provides that a notice of appeal filed before the disposition of a specified post-trial motion, such as a Rule 59 motion, will become effective upon disposition of the motion. In a separate order entered today, I have denied plaintiff's Rule 59 motion. Therefore, plaintiff's notice of appeal will be effective as of today.

Because the notice is not accompanied by the \$105 fee for filing his appeal, I construe plaintiff's notice to include a request for leave to proceed on appeal in forma pauperis.

Plaintiff's request for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether plaintiff's request must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g) or because the appeal is not taken in good faith. Plaintiff does not have three strikes against him, and I do not intend to certify that his appeal is not taken in good faith.

The only other hurdle to plaintiff's proceeding with his appeal in forma pauperis is the requirement that he pay an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). Plaintiff has not submitted the necessary trust fund account statement.

Accordingly, IT IS ORDERED that plaintiff may have until August 4, 2003, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately January 4, 2003 to approximately July 4, 2003. If, by August 4, 2003, plaintiff fails to submit the required statement or show cause for his failure to do so,

then I will deny his request for leave to proceed in forma pauperis on the ground that he has failed to show that he is entitled to indigent status on appeal.

Entered this 9th day of July, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge