

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

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FRED ODELL,

Plaintiff,

v.

ORDER

02-C-0691-C

THOMAS BORGAN,

Defendant.

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On January 6, 2003, I granted plaintiff Fred Odell leave to proceed in forma pauperis on a claim that unknown prison officials at the Fox Lake Correctional Institution were deliberately indifferent to his serious medical needs when they denied him prescribed surgery for his heart, prostate and kidney problems and required him to re-use his urethral catheter. In the same order, I denied his request for leave to proceed on claims that prison officials violated his constitutional rights by confining him in prison and subjecting him to parole, by shackling him in handcuffs and leg irons and allowing guards to observe him during medical exams and by allowing prisoners with contagious diseases to serve him food. In addition, I denied plaintiff leave to proceed on behalf of his three daughters. On April 10,

2003, plaintiff moved for reconsideration of the dismissal of certain of his claims and moved to amend his complaint. I denied these motions in an order dated April 24, 2003. Now plaintiff has filed a notice of appeal from those portions of the January 6 and April 24 orders that were adverse to him.

I construe plaintiff's notice of appeal to include a request for leave to proceed in forma pauperis on appeal (plaintiff has not paid the fee for filing a notice of appeal) and a motion for modification of the January 6 and April 24 orders to include a finding that the order is appealable immediately under 28 U.S.C. § 1292. Both motions will be denied.

28 U.S.C. § 1292 states in relevant part,

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

There is not a substantial ground for a difference of opinion on the questions whether certain of plaintiff's claims lack legal merit and whether he can litigate this action pro se on behalf of his daughters. Moreover, an immediate appeal will not materially advance the ultimate termination of this litigation. It would serve only to delay the litigation. Therefore, plaintiff's motion for amendment of the January 6 and April 24 orders to include a finding that the order is appealable under 28 U.S.C. § 1292 will be denied.

With respect to plaintiff's request for leave to proceed in forma pauperis on appeal, the request must be denied if the court certifies that the appeal is not taken in good faith. Certification of bad faith is proper when the issues to be raised on appeal are wholly lacking in legal merit. That is the situation here. There is no legal merit to plaintiff's argument that he should be able to obtain money damages in a civil lawsuit from various individuals who participated in his criminal prosecution, conviction, imprisonment and subsequent probation, without first obtaining habeas corpus relief from the collateral consequences of his conviction. Also, even if plaintiff could litigate an action pro se on behalf of his daughters, which he cannot, there is no legal merit whatsoever to his daughters' contentions that their federal or constitutional rights have been violated by plaintiff Fred Odell's conviction and parole and the conditions of his confinement. Finally, plaintiff cites no law, and I am aware of none, to suggest that his being observed by prison guards during medical examinations or being served food on occasion by inmates with diseases such as AIDS or shingles violated his constitutional rights.

#### ORDER

IT IS ORDERED that plaintiff's motion for amendment of the January 6, 2003 and April 24, 2003 orders to include a finding that the order is appealable under 28 U.S.C. § 1292 is DENIED.

Plaintiff's request for leave to proceed in forma pauperis on appeal is denied and I certify that plaintiff's appeal is not taken in good faith.

Entered this 20th day of May, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge