

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

MICHAEL A. GRINDEMANN,

Plaintiff,

v.

JON E. LITSCHER (Secretary of WI DOC),
JANE GAMBLE (Warden KMCI)

Defendants.

ORDER

02-C-0429-C

Judgment was entered in this case on February 21, 2003, immediately following this court's February 20, 2003 order granting defendants' motion for summary judgment. The record reflects that on March 14, 2003, plaintiff filed a notice of appeal directly with the Court of Appeals for the Seventh Circuit, challenging the February 20 decision. The court of appeals forwarded plaintiff's notice to this court for filing pursuant to Fed. R. App. P. 4(d). In an order dated March 21, 2003, I construed plaintiff's notice of appeal as including a request for leave to proceed in forma pauperis on appeal. I concluded that plaintiff was not precluded from proceeding in forma pauperis under the three-strike provision of the in forma pauperis statute or because his appeal was not taken in good faith. However, I could

not determine whether plaintiff was financially eligible for pauper status because plaintiff had not submitted a trust fund account statement as required under 28 U.S.C. § 1915(a). Therefore, I gave plaintiff until April 7, 2003, in which to submit the necessary statement.

On March 27, 2003, plaintiff Grindemann filed in this court a second document titled “notice of appeal.” This notice appears to have crossed in the mail with this court’s March 21 order. Although the second notice is not identical to the notice of appeal plaintiff filed directly with the court of appeals, both notices document plaintiff’s decision to appeal from the February 20 order and the February 21, 2003 judgment. The second notice is different only because it sets out the issues plaintiff intends to raise on appeal.

Under 28 U.S.C. § 1915(b), if a prisoner files an appeal in forma pauperis, the prisoner must pay the full amount of the \$105 fee for filing the appeal. Ordinarily, every “notice of appeal” is treated as a separate appeal. However, in this case, it is not clear that plaintiff understood that the notice of appeal he filed directly with the court of appeals would be forwarded to this court for filing. It is possible that he received a communication from the court of appeals advising him that he had filed his notice in the wrong court and that he did not understand that the appeal would be forwarded to this court and treated as though it had been filed here in the first place. Even if he was not confused about the status of his original notice, it would be unnecessarily harsh to hold him financially liable for filing a second notice of appeal when that notice does nothing more than set out his statement of

reasons for taking an appeal.

Accordingly, I construe plaintiff's document titled "notice of appeal" dated March 24, 2003 as a statement of issues plaintiff intends to raise on appeal in connection with the notice of appeal he filed on March 14, 2003, and request that the clerk of court docket it as such. Plaintiff remains responsible for submitting a trust fund account statement as directed in this court's March 21, 2003 order so that I can determine whether he is financially eligible to proceed in forma pauperis on appeal. If, by April 7, 2003, plaintiff fails to submit the required statement or show cause for his failure to do so, 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 2nd day of April, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge