

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

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FREDERICK ROGERS,

Plaintiff,

ORDER

v.

03-C-230-C

CINDY O'DONNELL, JENNIFER MIKUTIS,  
SANDY HAUTAMAKI, PAMELA WALLACE,  
JOHN LISTER, JENNIFER HELLENBRAND and  
JEAN THIEME,

Defendants.

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Judgment was entered in this case on March 5, 2004, granting defendants' motion for summary judgment and closing this case. Now plaintiff has filed a timely notice of appeal. Because the notice is not accompanied by the \$255 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. Until he does so, I cannot determine whether he is indigent and if he is, the amount of his initial partial payment.

Additionally, in his notice of appeal, plaintiff requests that a lawyer be appointed to assist him on appeal. This court does not have authority to appoint counsel for plaintiff now that his case has been completed at the district court level. Rather, he should direct his request for the appointment of counsel to the court of appeals.

Accordingly, IT IS ORDERED that plaintiff may have until April 26, 2004, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately October 1, 2003, to approximately April 1, 2004. If, by April 26, 2004, plaintiff fails to submit the required trust account statement or affidavit of indigency, 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 6th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge