

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

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JAMES J. KAUFMAN,

Plaintiff,

v.

GARY R. McCAUGHTRY, SGT. McCARTHY,  
JAMES MUENCHOW, RENEE RONZANI,  
SANDY HAUTAMAKI, JOHN RAY,  
CYNTHIA L. O'DONNELL and JAMYI WITCH,

Defendants.  
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MEMORANDUM

03-C-27-C

On June 4, 2003, plaintiff James J. Kaufman filed a notice of appeal from this court's orders of March 27, 2003, April 24, 2003, May 9, 2003, May 19, 2003, and May 22, 2003. In an order dated June 9, 2003, I construed plaintiff's notice to include a request for a finding that the orders of March 27, May 9, May 19 and May 22 were appealable under 28 U.S.C. § 1292, and denied that request. In addition, I denied plaintiff leave to appeal in forma pauperis from the April 24, 2003 order, certified that the appeal was not taken in good faith, and directed plaintiff to pay the \$105 fee for filing his appeal immediately. The Court of Appeals for the Seventh Circuit assigned this appeal no. 03-2600.

On June 24, 2003, plaintiff filed a document in the Court of Appeals for the Seventh Circuit titled “Plaintiff’s Appeal” and dated June 15, 2003. This appeal is not identical to the notice of appeal plaintiff filed with this court on June 4, 2003. Therefore, it was construed by the court of appeals as a second appeal and referred to this court for filing and a determination of the fee status. That appeal was assigned no. 03-2789.

In a memorandum dated July 1, 2003, I noted that although plaintiff’s June 15 “appeal” had not been sent to the court of appeals with all of the documents specified in Fed. R. Civ. P. 24(a)(5), I nevertheless inferred from the content of the document that plaintiff was asking the court of appeals to rule on the question whether this court properly denied him leave to proceed in forma pauperis on appeal in the June 9, 2003 order, as he is permitted to do under Rule 24. I requested that the clerk of court return the document to the court of appeals so that it could review plaintiff’s submission and determine whether it agreed with my assessment that the “appeal” that had been given no. 03-2789 was indeed an effort by plaintiff, albeit a poor one, to comply with Fed. R. App. P. 24(a)(5).

Inexplicably, on July 18, 2003, plaintiff filed in the court of appeals a document titled “Appellant’s Motion for Permission to Appeal In Forma Pauperis,” showing appeal nos. 03-2789 and 03-2600 in the caption, together with an affidavit of indigency and a document titled “Memorandum in Support of PLRA Motion for Leave to Proceed on Appeal In Forma Pauperis.” In the memorandum, plaintiff again states that he is challenging this court’s

orders of March 27, 2003, April 24, 2003, May 9, 2003, May 19, 2003, and May 22, 2003. In an order dated October 2, 2003, the court of appeals noted that plaintiff had erroneously filed the motion for leave to appeal in forma pauperis in the court of appeals and ordered that the motion be transferred to this court for a ruling.

I continue to believe that the content of plaintiff's June 24, 2003 submission to the court of appeals titled "Plaintiff's Appeal" and docketed as appeal no. 03-2789 is an attempt by plaintiff to file the affidavit required by Fed. R. App. P. 24(a)(5) in support of a request directly to the court of appeals for leave to proceed in forma pauperis in response to this court's denial of his request. The motion for leave to proceed in forma pauperis and accompanying papers that plaintiff filed with the court of appeals on July 18, 2003 may well have been intended to supplement that submission, as it refers to the precise orders that are the subject of appeal no. 03-2600.

Once again, I am requesting the clerk of court to return plaintiff's submission to the court of appeals for a determination whether these documents should be construed as supplemental documents in support of plaintiff's June 24 attempt to request pauper status from the court of appeals directly pursuant to Fed. R. App. P. 24(a)(5). If the court of appeals determines that plaintiff's June 24, 2003 submission titled "Plaintiff's Appeal" is

indeed a second appeal, then I will consider whether plaintiff may proceed in forma pauperis as to that appeal.

While the court of appeals is considering whether to construe plaintiff's filings as an attempt to ask that court for a review of my decision to deny him leave to proceed in forma pauperis , plaintiff should not file any additional documents relating to his appeals in either this court or the court of appeals unless he is asked to do so. Plaintiff should be aware that any additional document he submits to either court may be construed as yet another appeal for which he will be obligated under the 1996 Prison Litigation Reform Act to pay a \$105 filing fee.

Entered this 10th day of October, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge