

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

ALEKSANDRA CICHOWSKI and
CEZARY CICHOWSKI,

ORDER

Plaintiffs,

05-C-262-C

v.

FRED D. HOLLENBECK; TOM CASEY; DEBBIE KING;
SAUK COUNTY; JUDGES GUY REYNOLDS
and EVENSON; DONNA MUELLER;
CARRIE WASTLICK; GENE WIEGAND;
BRANT BAILEY; CURAN HOLLENBECK AND ORTON, S.C.;
WAYNE MAFFEI; JENKS CROSS MERCER and MAFFEI LAW
FIRM; M&I BANK; DAVE GUTTER; MARK L. KRUEGER;
THE BANK OF MAUSTON; ROBERT FAIT;
TOM SCHMIDT; KELLY HONNOLD; and
SCOT SCHMIDT,

Defendants.

In an order entered in this case on November 22, 2005, I granted defendants' motions to dismiss plaintiffs' claims that 1) defendants M&I Bank, Dave Gitter, Wayne Maffei, the law firm of Cross, Jenks, Mercer and Maffei, Mark Krueger, Fred D. Hollenbeck, Thomas Casey, Debbie King (Frisch), Robert Fait, Tom Schmidt, Kelly Honnold, Scott Schmidt, the law firm of Curran, Hollenbeck & Orton, S.C. and the Bank of Mauston

engaged in a conspiracy to commit fraud with the goal of extinguishing a lien that plaintiffs allegedly held against certain property; 2) defendant Krueger and Judge Reynolds conspired to deprive plaintiffs of their constitutional right to due process in state court; 3) Tom Schmidt violated plaintiff Aleksandra Cichowski's constitutional rights under the Fourth and Fourteenth Amendments in connection with her arrest and the initiation of criminal action against her; and 4) defendants Robert Fait, Tom Schmidt and Bank of Mauston violated plaintiffs' Fourteenth Amendment rights. I denied the motion of defendants Bank of Mauston and Robert Fait to dismiss plaintiffs' claim that they violated plaintiff Aleksandra Cichowski's constitutional rights under the Fourth and Fourteenth Amendments when they arrested her and initiated criminal action against her. With the granting of the various motions to dismiss, this court disposed of all of plaintiffs' claims against defendants Gitter, Maffei, M&I Bank and Cross, Jenks, Mercer and Maffei, Krueger, Fred D. Hollenbeck, Thomas Casey, Tom Schmidt, Kelly Honnold, Scott Schmidt and Curran, Hollenbeck & Orton, S.C., so these defendants were dismissed from the case.

Now plaintiffs have filed a notice of appeal from the order of dismissal, together with a request for leave to proceed on appeal in forma pauperis. Separately, plaintiffs have moved for a stay of execution of a second order entered on November 22, 2005, in which I granted the motion of defendants Mark Krueger, William Greenhalgh, Greenhalgh & Krueger, S.C., Adela Lucarz and Joseph Lucarz seeking the imposition of sanctions on plaintiffs pursuant

to Fed. R. Civ. P. 11 and sanctioning plaintiffs in the amount of \$300, which was to be paid to defendant Krueger no later than December 15, 2005. Although plaintiffs addressed their notice of appeal, request for leave to proceed in forma pauperis and motion for a stay directly to the Court of Appeals for the Seventh Circuit, this court is the proper court to consider in the first instance whether plaintiffs may take an appeal from the November 22 order in forma pauperis, 28 U.S.C. § 1915(a)(1), and whether a stay of execution of the order imposing sanctions pending appeal is appropriate, Fed. R. App. P. 8(a)(1).

Because there are claims remaining in this case against a number of defendants, I construe plaintiffs' notice of appeal to include a request for the entry of final judgment pursuant to Fed. R. Civ. P. 54 as to those defendants against whom all of plaintiffs' claims have been dismissed.

As plaintiffs are aware from an earlier appeal they filed in this case, Fed. R. Civ. P. 54(b) provides in pertinent part:

[W]hen multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however, designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Under this rule, a judge has the power to enter final judgment whenever there are multiple parties following an order that finally resolves a party's liability even though the case continues in the district court between the other parties. She has the power, but not the duty. Doe v. City of Chicago, 360 F.3d 667, 673 (7th Cir. 2004). Here, there is "just reason for delay."

There is pending in this court another motion to dismiss filed by all of the remaining defendants except defendants Bank of Mauston and Robert Fait, and it is likely that the Bank of Mauston and Robert Fait will move for summary judgment on the one claim remaining against them. The story plaintiffs tell in their complaint and their claims against the various defendants are interrelated. In this circumstance, it is in the interest of judicial economy to require plaintiffs to wait to take an appeal until their claims against all of the parties have been resolved. Therefore, I decline to enter final judgment as to the defendants who were dismissed from this case on November 22, 2005. Plaintiffs will remain free to challenge the propriety of the November 22 decision after the entire case has been resolved.

Although I am not entering final judgment as to any defendant at this time, plaintiffs' notice of appeal has been docketed. Under the court of appeals' standard procedure, the district court is to rule on a request for leave to proceed in forma pauperis on appeal even if the appeal has been ruled inappropriate. An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith. 28 U.S.C. §

1915(a)(3). I intend to so certify. Plaintiffs' claims in this court are so lacking in legal merit that I have found sanctions under Rule 11 to be warranted. Because plaintiffs appear to want to press on appeal claims over which this court clearly lacks jurisdiction or that I have found to be legally meritless, their appeal must be certified as taken in bad faith. Therefore, plaintiffs' request for leave to proceed in forma pauperis on appeal from the November 22 order will be denied.

With respect to plaintiffs' motion for a stay of execution of the order requiring them to pay \$300 as a sanction under Fed. R. Civ. P. 11, this motion, too must be denied. In Corley v. Rosewood Care Center, Inc. 142 F.3d 1041, 1057-58 (7th Cir. 1998), the Court of Appeals for the Seventh Circuit reiterated its view that stays of such sanctions are not appropriate.

We have said that when a party or its counsel are sanctioned in the course of litigation, immediate payment of the sanction is the cost the two must bear for the privilege of continuing to litigate. The propriety of the sanction may then be challenged on appeal once there is a final decision in the case, even if that is long after the sanction was paid. Cleveland Hair Clinic, Inc. v. Puig, 104 F.3d 123, 126 (7th Cir.1997); see also Cleveland Hair Clinic, Inc. v. Puig, 106 F.3d 165, 166, 168 (7th Cir.1997). Payment of the sanction does not moot the appeal because the appellate court can fashion effective relief to the appellant by ordering that the sum paid in satisfaction of the sanction be returned. See Cleveland Hair Clinic, 104 F.3d at 126; cf. McKinney v. Indiana Michigan Power Co., 113 F.3d 770, 772-73 (7th Cir.1997) (compliance with order assessing jury costs did not prevent counsel from challenging the order because amount paid could be returned to him if he were to prevail).

ORDER

IT IS ORDERED that plaintiffs Aleksandra and Cezary Cichowski's request for entry of final judgment against the defendants who were dismissed from this case on November 22, 2005 is DENIED.

Further, plaintiffs' motion for leave to proceed in forma pauperis on appeal is DENIED because I must certify that the appeal is not taken in good faith.

Finally, plaintiffs' motion for a stay of execution of the order of November 22, 2005, requiring them to pay a sanction of \$300 to defendants Mark Krueger, William Greenhalgh, Greenhalgh & Krueger, S.C., Adela Lucarz and Joseph Lucarz, care of Mark Krueger, is DENIED.

Entered this 6th day of January, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge