

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

DONALD LEE PIPPIN, JR.,

Plaintiff,

v.

LT. ROBERT BLECHL, 2nd Shift Security
at OSCI (now Capt. and 1st Shift),

Defendant.

ORDER

04-C-582-C

This case remains pending against defendant Blechl on plaintiff's claim that Blechl violated his First Amendment rights by refusing to allow plaintiff to mail letters to his family, friends and clergy sometime in November 2003. Nevertheless, plaintiff has filed a notice of appeal from the September 29, 2005 order of this court dismissing his claims against former defendants Judy P. Smith, Jim Schwochert, Tom Edwards, Dr. Alexander Stolarski, Captain Derringer and John Doe. He appealed as well this court's order of August 19, 2005, denying plaintiff's motion for appointment of counsel, and this court's order of September 1, 2005, denying plaintiff's motion for summary judgment because it failed to conform in every respect to this court's summary judgment procedures, and his motion "for removal of the attorney general as counsel for defendants." In an order entered on October 19, 2005, I

denied plaintiffs' request for leave to proceed in forma pauperis on appeal and certified that his appeal was not taken in good faith. I told plaintiff that under the 1996 Prison Litigation Reform Act, he would have to pay the \$255 fee if he wished to proceed further with his appeal. I told plaintiff also that if he failed to pay the fee, it would be collected from his prison account according to the formula set out in 28 U.S.C. § 1915(b)(2).

Now plaintiff has filed a "Motion for Extension of Time to File," in which he asks that this court amend its October 19 order to reflect that he is no longer a prisoner and not subject to the Prison Litigation Reform Act with respect to his appeal. In addition, he asks for a stay of all proceedings for 30 days to allow him to hire a lawyer to represent him.

Plaintiff is correct that it was a mistake to suggest in the October 19 order that any portion of the fee for filing his notice of appeal can be collected from his prison account under the 1996 Prison Litigation. However, plaintiff's status as non-prisoner does not change the fact that he will have to pay the full \$255 filing fee for his appeal if he wishes to proceed further with it. This is because I have certified that his appeal is not taken in good faith. A certification of bad faith means that the person seeking to appeal in forma pauperis is not entitled to proceed under the in forma pauperis statute. To the extent that plaintiff may be asking this court for an enlargement of the time he has under Fed. R. App. P. 24(a)(5) to challenge in the court of appeals this court's finding that his appeal is not taken in good faith, he will have to file such a motion with the court of appeals. See Fed. R. App.

P. 26(b). I do not have the authority to grant such an extension.

With respect to plaintiff's request for a stay of his case against defendant Blechl, I note that dispositive motions are not due until December 16, 2005. If plaintiff finds a lawyer to assist him before that time, his lawyer may move the court for an enlargement of time to file dispositive motions. However, I am not willing to move the deadline on the mere speculation that plaintiff will succeed in his efforts to find a lawyer to represent him.

ORDER

IT IS ORDERED that plaintiff's motion for a stay of proceedings in this court is DENIED.

Further, IT IS ORDERED that the order of October 19, 2005, is AMENDED to reflect that plaintiff is not subject to the 1996 Prison Litigation Reform Act with respect to his appeal and, therefore, is not required to pay the fee for filing his appeal in installments pursuant to 28 U.S.C. § 1915 (b)(2). However, regardless of his non-prisoner status, if plaintiff intends to pursue his appeal, he will have to pay the \$255 filing fee because I have certified his appeal as not taken in good faith, unless he succeeds in obtaining a ruling from

the court of appeals under Fed. R. App. P. 24(a)(5) that this court erred in finding his appeal was not taken in good faith.

Entered this 10th day of November, 2005.

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