

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

HAJI JOHNSON, DANNY J. GARRETT,
DENNIS H. JACKSON,
EMANUEL D. JOHNSON,
SHELTON LOVE, CHARLES L. MOBLEY,
MARK D. PETERSON, JAMES PRICE,
JOHN ROUNDS and MARVIN BELLINGER,

ORDER

10-cv-330-bbc

Plaintiffs,

v.

RANDALL HEPP, TIM HAINES,
CHERYL WEBSTER, RICK REAMISCH
and ISREAL OZANNE,

Defendants.

This group civil rights action brought by inmates at the Stanley Correctional Institution was dismissed on September 7, 2010 for plaintiffs' failure to prosecute the case. On August 12, 2010, plaintiff Haji Johnson¹ filed a notice of appeal from the court's June 22, 2010 order informing plaintiffs that in order for them to pursue this case as a group, each of them would have to pay the \$350 filing fee. In a September 30, 2010 order, I denied plaintiff's motion to certify that an interlocutory appeal could be taken from the June 22 order as well as his motion to proceed in forma pauperis on appeal.

¹ For the sake of clarity I will refer to plaintiff Haji Johnson as "plaintiff" throughout this order.

Now plaintiff has filed a document titled “Motion for Review of Order” raising several matters. First, he states that he “moves the court to have [the September 30, 2010 order] reviewed for placement in the proper venue . . . [t]he Court of Appeals for the Seventh Circuit.” He states also that he “never appealed to the 7th Circuit District Court” and instead wanted his case to be heard by the Seventh Circuit Court of Appeals. Finally, he argues that he should not have to pay the \$455 filing fee for his appeal.

I will deny this motion. Given plaintiff’s statements above, it seems that he is confused about the appellate process. Even though plaintiff filed a notice of appeal to the Court of Appeals for the Seventh Circuit, it was still this court’s task to determine whether his interlocutory appeal should be certified and whether he could proceed in forma pauperis on appeal. 28 U.S.C. §1292(b); Fed. R. App. P. 24. The court of appeals received plaintiff’s appeal, and on October 4, 2010, issued an order directing him to file a brief explaining why he believed that I erred in denying him leave to proceed in forma pauperis on appeal. On November 15, 2010, the court of appeals issued an order dismissing his appeal because he failed to file a brief or pay the \$455 filing fee. Thus, there is no merit to plaintiff’s contention that his arguments were not heard in the proper venue.

Next, plaintiff argues that he does not owe the \$455 filing fee for his appeal and should not have this amount withdrawn from his prison trust fund account. He bases this argument in part on the fact that he failed to sign his notice of appeal. This argument fails for several reasons. First, an unsigned notice of appeal does not deprive the court of appeals of jurisdiction over the appeal. Robinson v. City of Chicago, 868 F.2d 959, 963 n.2 (7th

Cir. 1989). In any case, plaintiff's subsequent signed submissions in this court and the court of appeals are more than adequate to signal plaintiff's desire to appeal the June 22, 2010 order (for example, the thrust of plaintiff's current motion is to have his appeal heard by the court of appeals.) Finally, regardless of plaintiff's signature, this court can no longer reconsider the ruling ordering him to pay the \$455 filing fee. In its November 15, 2010 order, the court of appeals ordered plaintiff to pay the \$455 filing fee. If he thinks that the court of appeals erred in ordering him to pay the fee, he should file a motion in that court.

ORDER

IT IS ORDERED that plaintiff Haji Johnson's "Motion for Review of Order," dkt. #16, is DENIED.

Entered this 15th day of December, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge