

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

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WAYNE J. HART, JR.,

Plaintiff,

v.

MICHAEL THURMER, SUSAN KIMBALL,  
MARY GORSEK and PAUL SUMNICHT,

Defendants.  
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ORDER

11-cv-604-bbc

Judgment was entered in this case on October 19, 2012, granting defendants' motion for summary judgment and closing this case. Plaintiff filed a notice of appeal and on December 12, 2012, I granted his request for leave to proceed in forma pauperis on appeal. Now before the court is a second notice of appeal, in which plaintiff also includes a request for leave to proceed in forma pauperis. Dkt. #45.

Because this notice of appeal was received by the court on January 15, 2013, more than three months after the court's October 19 judgment closing this case, the appeal may be untimely. It is also necessary because it is duplicative of the first appeal. However, I will not deny it for these reasons, because only the Court of Appeals for the Seventh Circuit may determine whether it has jurisdiction to entertain an appeal. Hyché v. Christensen, 170 F.3d 769, 770 (7th Cir. 1999). With plaintiff's second appeal, he includes 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. I conclude that plaintiff's appeal is not taken in good faith because it is duplicative of his previous appeal.

Because I am certifying plaintiff's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Under Fed. R. App. P. 24, he has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. With his motion, he must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), with a statement of issues he intends to argue on appeal. Also, he must send along a copy of this order. Plaintiff should be aware that he must file these documents in addition to the notice of appeal he has filed previously. If he does not file a motion requesting review of this order, the court of appeals may choose not to address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require him to pay the entire \$455 filing fee before it considers his appeal. If he does not pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal.

ORDER

IT IS ORDERED that plaintiff Wayne Hart's request for leave to proceed in forma pauperis on appeal, dkt. #45, is DENIED. The clerk of court is directed to insure that plaintiff's obligation to pay the \$455 fee for filing his appeal is reflected in the court's financial records.

Entered this 29th day of January, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge