

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

ANN M. AUSTIN,

Plaintiff,

v.

MID-CENTURY INSURANCE COMPANY,

Defendant.

ORDER

12-cv-435-bbc

In a February 21, 2014 order, I granted defendant Mid-Century Insurance Company's motions to dismiss and for summary judgment and directed the clerk of court to enter judgment in favor of defendant. Judgment was entered the same day. Now plaintiff Ann Austin has filed a notice of appeal and a request for leave to proceed on appeal in forma pauperis. Plaintiff's financial information indicates that her annual income is below the level at which the court would ask her to prepay a portion of the appellate fee before proceeding further. Because she was granted leave to proceed in forma pauperis in this case, plaintiff "may proceed on appeal in forma pauperis unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Fed. R. App. P. 24(a). I cannot certify that this appeal is taken in good faith. As the order granting summary judgment to defendants shows, the magistrate judge was unable to schedule a pretrial conference with the parties for nine months because of plaintiff's

repeated requests for extensions of time; plaintiff failed to respond to defendant's requests for discovery and refused to attend her deposition, which was scheduled for her convenience; and failed to meet the deadline for responding to defendant's motion for summary judgment, despite the magistrate judge's explicit instructions to her at the pretrial conference. As a result, defendant was never able to learn any facts about plaintiff's alleged automobile accident in Arizona, such as where and how it happened, if it did, and what injuries or damages plaintiff sustained, although it made independent efforts to do so. Therefore, plaintiff's request to proceed in forma pauperis will be denied.

Because I am certifying plaintiff's appeal as not having been taken in good faith, she cannot proceed with her appeal without prepaying the \$505 filing fee unless the court of appeals gives her permission to do so. Under Fed. R. App. P. 24, plaintiff 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 her motion, she must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), with a statement of issues she intends to argue on appeal. Also, she must send along a copy of this order. Plaintiff should be aware that she must file these documents in addition to the notice of appeal she has filed previously.

If plaintiff does not file a motion requesting review of this order, the court of appeals might not address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require plaintiff to pay the entire \$505 filing fee before it considers her appeal. If plaintiff 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 Ann Austin's motion for leave to proceed in forma pauperis on appeal, dkt. #43, is DENIED. The clerk of court is directed to insure that plaintiff's obligation to pay the \$505 fee for filing her appeal is reflected in the court's financial records.

Entered this 2d day of April, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge