

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

LEIGHTON D. LINDSEY,

Plaintiff,

v.

TANIA CLARK, DAVID GARDNER,
ROBERT HABLE, TROY HERMANS,
STACEY HOEM, MARY MILLER,
SARAH MASON, SCOTT RUBIN ASCH,
JENNIFER ANDERSON, JERRY SWEENEY,
ANDRES NAGLE, DEANNA THEIN,
MARLA WALTERS, KEVIN TRIPP,
JEFFREY KNUPPLE, BURTON COX,
JONI SHANNON-SHARPE,
BRIAN KOOL and MELANIE HARPER,

Defendants.

ORDER

12-cv-923-bbc

Judgment was entered in this case on September 24, 2014 after I granted defendants' motion for summary judgment. Plaintiff filed a pro se notice of appeal on October 22, 2014, followed by a number of other filings, including a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), which was denied on November 10, 2014. Because plaintiff's October 22, 2014 notice of appeal was not accompanied by the \$505 fee for filing his appeal, I construe plaintiff's notice to include a request for leave to proceed on appeal in forma pauperis.

Plaintiff's request 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. Plaintiff does not have three strikes against him and I do not intend to certify that his appeal is not taken in good faith. Plaintiff alleged that he had a knee injury that was exacerbated by having to kneel for cuffing and defendants refused to reimpose an earlier restriction on the kneeling requirement. Although I found that defendants either had no responsibility for refusing to reimpose the restriction or were not deliberately indifferent to plaintiff's situation, I cannot say that plaintiff is not acting in good faith in appealing the decision.

The only remaining hurdle to proceeding on the appeal in forma pauperis is the requirement that plaintiff make an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). Plaintiff has not submitted the necessary trust fund account statement. Until he does so, I cannot determine whether he is indigent and, if he is, the amount of his initial partial payment.

In his notice of appeal, plaintiff requests appointment of counsel on appeal. This motion is not properly raised in this court. If plaintiff wishes to have counsel recruited to represent him on appeal, he will have to make his request directly to the Court of Appeals for the Seventh Circuit.

ORDER

IT IS ORDERED that

1. Plaintiff may have until December 5, 2014, in which to submit a certified copy of his trust fund account statement for the six-month period from approximately April 1, 2014 to approximately October 1, 2014. If by December 5, 2014, plaintiff fails to submit the required trust account statement or show cause for his failure to do so, then I will deny his request for leave to proceed in forma pauperis on the ground that he has failed to show that he is entitled to indigent status on appeal.

2. Plaintiff's motion for appointment of counsel on appeal, dkt. #173, is DENIED.

Entered this 14th day of November, 2014.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge