

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

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MUSTAFA-EL K.A. AJALA,
formerly known as Dennis E. Jones-El,

Plaintiff,

v.

CRAIG TOM and MATTHEW SCULLION,

Defendants.

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ORDER

13-cv-102-bbc

Judgment was entered in this action on August 21, 2015, granting defendants' motion for summary judgment and closing this case. Now plaintiff has filed a notice of appeal. Giving plaintiff the benefit of the mail box rule set out in Houston v. Lack, 487 U.S. 266 (1988) (pro se prisoner's notice of appeal timely if delivered to prison authorities within applicable time limit), plaintiff's notice appears to have been timely filed. Although the notice was not received at the court until September 23, 2015, plaintiff's certificate of mailing indicates he placed the notice in the prison mail stream on September 20, 2015.

Because the notice is not accompanied by the \$505 fee for filing this appeal, I construe plaintiff's notice to include 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. Plaintiff does not have three strikes against him and I do not intend to certify that his appeal is not taken in good faith.

The only other 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.

Accordingly, IT IS ORDERED that plaintiff may have until October 15, 2015, in which to submit a certified copy of his trust fund account statement for the six-month period from approximately March 23, 2015 to approximately September 23, 2015. If, by October 15, 2015, 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.

Entered this 30th day of September, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge