

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

DENNIS L. MAXBERRY,

Plaintiff,

v.

KELLER GRADUATE SCHOOL OF MANAGEMENT
as DEVRY UNIVERSITY,

Defendants.

ORDER

13-cv-802-bbc

On January 27, 2014, I dismissed plaintiff Dennis L. Maxberry's complaint and directed him to submit an amended complaint that complied with Fed. R. Civ. P. 8. Now plaintiff has filed a notice of appeal along with a motion to proceed in forma pauperis on appeal. Because the January 27, 2014 order is not a final order, I understand plaintiff to be asking for certification that he can take an interlocutory appeal under 28 U.S.C. §1292(b).

28 U.S.C. § 1292(b) states in relevant part,

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

Nothing in plaintiff's complaint raises a substantial ground for a difference of opinion whether it should have been dismissed for failure to comply with Fed. R. Civ. P. 8 and an

appeal will not efficiently advance the litigation. Therefore, I will deny plaintiff's request for certification that he be permitted to take an interlocutory appeal from the January 27, 2014 order.

Nevertheless, plaintiff's filing of a notice of appeal triggers a financial obligation: he owes \$505 fee for filing his notice of appeal. Plaintiff has filed a motion to proceed in forma pauperis on appeal. A district court has authority to deny a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 for one or more of the following reasons: the litigant wishing to take an appeal has not established indigence, the appeal is in bad faith or the litigant is a prisoner and has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998). I will deny plaintiff's motion for pauper status for filing because I certify that his appeal from an unappealable non-final order is not taken in good faith.

Because I am certifying plaintiff's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$505 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), along with a statement of issues he intends to argue on appeal. Also, he must send the court of appeals 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 \$505 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

1. Plaintiff Dennis Maxberry's motion for the court to certify that an interlocutory appeal may be taken from the January 27, 2014 order in this case, dkt. #10, is DENIED.

2. Plaintiff's request for leave to proceed in forma pauperis on appeal, dkt. #14, is DENIED. The clerk of court is directed to insure that plaintiff's obligation to pay the \$505 fee for filing his appeal is reflected in the court's financial records.

Entered this 11th day of February, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge