

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

WENFANG LIU,

Plaintiff,

v.

RUSSELL SYLVAN SOEHNER, II,

Defendant.

ORDER

15-cv-385-wmc

Judgment was entered in this case on July 8, 2015, after the court dismissed plaintiff Wen Fang Liu's complaint for lack of subject matter jurisdiction. Liu has now filed a notice of appeal, (dkt. #7), and a request for leave to proceed *in forma pauperis* on appeal, (dkt. #12). Her request to proceed *in forma pauperis* will be denied.

In determining whether a litigant is eligible to proceed *in forma pauperis* on appeal, the court must find that she is indigent and, in addition, that the appeal is taken in good faith for purposes of Fed. R. App. P. 24(a)(3). See 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith."). Although Liu has been found eligible to proceed as an indigent litigant previously in this case, the court cannot certify that the appeal is taken in good faith. In that respect, the United States Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a plaintiff is appealing claims that have been dismissed as frivolous or without legal merit. See *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). To the extent that Liu is attempting to raise on appeal the claims she raised in her complaint, the court certifies that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3). There can be

no dispute that the court lacks subject matter jurisdiction over those claims. Accordingly, her request for leave to proceed *in forma pauperis* on appeal must be denied.

An additional matter requires attention. Shortly after Liu filed her notice of appeal, she filed a proposed amended complaint (dkt. #10) and a proposed second amended complaint (dkt. #11). Because she filed a notice of appeal, however, this court no longer has jurisdiction to consider her proposed amended complaint or proposed second amended complaint. The court will take no further action with respect to those documents.

ORDER

IT IS ORDERED that:

- (1) The court CERTIFIES that plaintiff Wenfang Liu's appeal is not taken in good faith for the purposes of Fed. R. App. P. 24(a)(3).
- (2) Plaintiff's request for leave to proceed *in forma pauperis* on appeal, (dkt. #12), is DENIED.
- (3) Although this court has certified that plaintiff's appeal is not taken in good faith under Fed. R. App. P. 24(a)(3), plaintiff is advised that she may challenge this finding pursuant to Fed. R. App. P. 24(a)(5), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Seventh Circuit, within thirty (30) days of the date of this order. With that motion, plaintiff must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), along with a copy of this order and a statement of the issues that she intends to argue on appeal. Plaintiff should be aware that she must file these documents in addition to the notice of appeal that she filed previously.

Entered this 23rd day of July, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge