

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

ROY MITCHELL,

Plaintiff,

v.

STATE OF WISCONSIN DEPARTMENT
OF HEALTH SERVICES,

Defendants.

ORDER

15-cv-426-wmc
Appeal no. 15-3541

On November 3, 2015, the court dismissed plaintiff Roy Mitchell's complaint for lack of subject matter jurisdiction. Mitchell now seeks leave to proceed *in forma pauperis* on appeal. (Dkt. #52).

In determining whether a litigant is eligible to proceed *in forma pauperis* on appeal, the court must find that (1) the litigant is indigent and (2) 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 Mitchell 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.

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. *See Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). Given that neither this court nor the Seventh Circuit has jurisdiction over the subject matter of Mitchell's

case, any appeal is frivolous and the court cannot certify that it is taken in good faith for purposes of Fed. R. App. P. 24(a)(3). Accordingly, her request for leave to proceed *in forma pauperis* on appeal must be denied.

ORDER

IT IS ORDERED that:

- (1) The court CERTIFIES that plaintiff Roy Mitchell's appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3).
- (2) Mitchell's request for leave to proceed *in forma pauperis* on appeal, (dkt. #52), is DENIED.
- (3) Although this court has certified that Mitchell's appeal is not taken in good faith under Fed. R. App. P. 24(a)(3), Mitchell 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, Mitchell 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 issues she intends to argue on appeal. Mitchell should be aware that she must file these documents in addition to the notice of appeal she has filed previously.

Entered this 17th day of November, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge