

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

WILLIAM STAPLES,

Plaintiff,

ORDER
00-C-506-C

v.

STEVEN B. CASPERSON,
MICHAEL BECK, JON E.
LITSCHER, SGT. L. DAVIS, PHILLIP
KINGSTON, CAPT. TEGEL AND
BARB CHANDLER,

Defendants.

Judgment was entered in this case on September 25, 2000, dismissing plaintiff William Staples's complaint pursuant to 28 U.S.C. § 1915A for his failure to state a claim upon which relief could be granted. Later, plaintiff moved to alter or amend the judgment. That motion was denied in an order dated October 11, 2000. Subsequently, plaintiff filed a notice of appeal. Because the appeal was not accompanied by the required filing fee, I construed the notice to include a request for leave to proceed on appeal in forma pauperis. The request was denied in an order dated October 27, 2000, and I certified that plaintiff's appeal was not taken in good

faith. In that same order, I advised plaintiff that he would have to pay the \$105 for filing his appeal immediately unless he were to challenge this court's finding of bad faith in the court of appeals within 30 days of the date he received the October 27 order.

On October 30, 2000, plaintiff wrote to request reconsideration of the September 25 judgment. I denied the request on November 8, 2000, on the ground that plaintiff's appeal divested this court of jurisdiction to consider any further motions relating to the merits of his complaint. Not to be deterred, plaintiff wrote to the court of appeals and requested that his appeal be dismissed. The court of appeals granted plaintiff's request in an order dated November 14, 2000 and directed that plaintiff pay the appellate fees of \$105 to the clerk of the district court. He has done so.

Sometime after November 8 but before November 14, 2000, plaintiff wrote again to renew his October 30 request for reconsideration of the September 25 judgment.¹ After the court of appeals dismissed plaintiff's appeal, I construed this newest motion as a renewed request for reconsideration of the September 25 judgment. The motion was denied in an order dated November 16, 2000, on the ground that plaintiff had failed to show that I had erred in

¹ Plaintiff's motion is dated November 8, but that cannot be the date on which he wrote it, because he refers in the motion to this court's November 8 order. The motion was stamped as having been received by the office of the clerk of court on November 13, 2000 and was docketed on November 17, 2000.

dismissing his complaint.

Now before the court is plaintiff's notice of appeal from the November 16, 2000 order. This notice of appeal is not accompanied by the \$105 fee for filing an appeal, although a filing fee is required each time a plaintiff files a notice of appeal, even when he files more than one notice of appeal in the same case. Therefore, I construe plaintiff's notice of appeal to include a request for leave to proceed in forma pauperis on appeal. Again, the motion will be denied. Plaintiff does not explain what legal errors he believes I made in the November 16 order and I am aware of none. I assume he wishes to appeal the same matters he sought to appeal earlier. Accordingly, for the reasons expressed in the October 27, 2000 order finding that plaintiff's first appeal was not taken in good faith, I certify that plaintiff's second appeal is not taken in good faith.

ORDER

IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that his appeal is not taken in good faith.

If plaintiff intends to challenge this court's certification that his appeal is not taken in good faith, he has 30 days from the date he receives this order in which to file with the court of appeals a motion for leave to proceed in forma pauperis on appeal. His motion must be

accompanied by a copy of the affidavit prescribed in the first paragraph of Fed. R. App. P. 24(a), a copy of this order, and a copy of this court's order of October 27, 2000.

If plaintiff does not intend to challenge the certification of bad faith, he will owe the \$105 fee for filing his appeal immediately. If he does not pay it, the court of appeals will take whatever action it deems appropriate under the circumstances with respect to this appeal.

Entered this 6th day of December, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge