

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

RONALD ROBINSON,

Plaintiff,

v.

WARDEN J.T. O'BRIEN,
COUNSELOR M. KLAWITTER,
COUNSELOR K. ZOOK, CASE
MANAGER M CISKE, UNIT MANAGER
S. ROBINSON, L.T.R.E. ROBINSON,
D.H.O. W.W. SKIDERSKI,

Defendants.

ORDER

03-C-32-C

Plaintiff brought this civil action for declaratory, injunctive and monetary relief pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971) and the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680. Plaintiff alleged that defendants retaliated against him, refused to separate him from his cell mate and confiscated his property. Plaintiff paid the \$150.00 filing fee. On March 6, 2003, judgment was entered dismissing plaintiff's case on the ground that he failed to exhaust his administrative remedies. On March 17, 2003, I denied plaintiff's timely-filed motion to alter or amend the

judgment pursuant to Fed. R. Civ. P. 59 (referred to in the March 17, 2003, order as a “motion for reconsideration.”) Now plaintiff has filed a notice of appeal. Because plaintiff’s notice is not accompanied by the \$105 fee for filing his appeal, I construe plaintiff’s notice to include a request for leave to proceed on appeal in forma pauperis. The request will be denied, because plaintiff does not qualify for in forma pauperis status under 28 U.S.C. § 1915(g).

Section 1915(g) reads as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

On at least three prior occasions, plaintiff has been denied leave to proceed in forma pauperis in the Seventh Circuit Court of Appeals and Central District of Illinois in lawsuits deemed to be legally frivolous. See Robinson v. Powell, 297 F.3rd 540 (7th Cir. 2002); Robinson v. Chambers, 99-C-1072; 10/19/99 (C.D. Ill); and Robinson v. Doe, 99-CV-1073; 11/18/99 (C.D. Ill).

Because plaintiff has accumulated three strikes, so long as he is incarcerated he cannot file any new lawsuit or an appeal without prepaying the filing fee unless he can show

that he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Plaintiff does not allege any credible facts in his complaint from which an inference may be drawn that he is under imminent danger of serious physical injury. He alleges that defendants have retaliated against him, refused to separate him from his cell mate and confiscated his property. These assertions of wrongdoing are inadequate to permit him to proceed under the exception in § 1915(g). Therefore, he cannot take advantage of the initial partial payment provision of § 1915. He owes the \$105 fee in full immediately.

Plaintiff filed a trust account statement with the court that covers the period October 4, 2001, through January 9, 2003. This statement shows that plaintiff does not presently have sufficient money in his prison account or the means to pay a filing fee. Nevertheless, prison officials will be required to monitor plaintiff's account and collect monthly payments according to the formula set out in 28 U.S.C. § 1915(b)(2) if and when such funds do exist.

Aside from his destitution, plaintiff may delay payment of the \$105 fee under one other circumstance; that is, if he challenges in the court of appeals within thirty days of the date he receives this order the decision to deny his request for leave to proceed in forma pauperis on appeal because of his § 1915(g) status. Fed. R. App. P. 24(a)(5). If the court of appeals decides that it was improper to bar plaintiff from taking his appeal in forma pauperis, then the matter will be remanded to this court for a determination whether

plaintiff's appeal is taken in good faith. If the court of appeals determines that the district court was correct finding that § 1915(g) bars plaintiff from taking his appeal in forma pauperis, the \$105 filing fee payment will be due in full immediately. Whatever the scenario, plaintiff is responsible for insuring that the required sum is remitted to the court at the appropriate time.

ORDER

IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal is DENIED because three strikes have been recorded against plaintiff under 28 U.S.C. § 1915(g) and plaintiff does not qualify for the exception to § 1915(g).

Entered this 11th day of April, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge