IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

SOUVANNASENG BORIBOUNE,
ANTHONY CALIPH STEVENS'EL,
DONDRAS L. HOUSE and EFRAIN
CAMPOS,

Petitioners,

ORDER

04-C-0015-C

v.

GERALD BERGE, PETER HUIBREGSTE,
VIKI SEBASTION, ELLEN K. RAY and
KELLY COON, as does their individual
capacities,

Respondents.

- -

In an order dated February 2, 2004, I dismissed this case without prejudice to each petitioner filing his claims in a lawsuit separate from his co-petitioners. In stating that the "case" rather than the "complaint" was dismissed without prejudice, I intended to make it clear that this action was complete for all purposes except post-judgment motions or an appeal. Petitioners clearly understood the finality of the February 2 order. On February 11, 2004, they moved pursuant to Fed. R. Civ. P. 59 for reconsideration of the order. I denied the Rule 59 motion in an order dated March 8, 2004. Then, in an effort to make it express

that this action was over, I included in the March 8 order a directive to the clerk of court to enter judgment dismissing this action without prejudice. In addition, I advised petitioners that they would have 30 days from the date of the order denying their Rule 59 motion to file a notice of appeal. I suspected that petitioners might exercise the option of taking an appeal in lieu of filing separate actions, because the issue raised in this court's February 2 and March 8 orders is one of first impression in this circuit: whether a district court has discretion, and perhaps an obligation under the 1996 Prisoner Litigation Reform Act, to require prisoners filing group complaints to file their actions separately.

On March 10, 2004, the clerk entered judgment. The judgment does not reiterate the dismissal language of the March 8 order, but instead states that judgment is entered "in favor of respondents dismissing petitioners' *complaint* and all claims contained therein without prejudice." (Emphasis added.) Now petitioners have filed a notice of appeal.

As an initial matter, I note that the court of appeals has held repeatedly that a judgment that dismisses a *complaint* without prejudice is not a final order sufficient to confer appellate jurisdiction over a subsequent appeal. See, e.g., Paganis v. Blonstein, 3 F.3d 1067 (7th Cir. 1993); Hatch v. Lane, 854 F.2d 981, 982 (7th Cir. 1988) (order dismissing complaint with leave to replead not final judgment); Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461, 463 (7th Cir. 1988); Bieneman v. City of Chicago, 838 F.2d 962, 963 (7th Cir. 1988); Benjamin v. United States, 833 F.2d 669, 671 (7th Cir. 1987); Car

Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1111 (7th Cir. 1984), cert. denied, 470 U.S. 1054 (1985). However, the court of appeals also has recognized that Fed. R. Civ. P. 58 does not require district courts to use certain "magic words" to denote the finality of an action. See, Paganis v. Blonstein, 3 F.3d at 1067 (citing cases). A judgment need only reflect that the plaintiffs are denied all relief. Id. Nevertheless, when a "flaw lies in the translation of the original meaning to the judgment, then Rule 60(a) allows a correction." United States v. Griffin, 782 F.2d 1393, 1396 (7th Cir.1986). Fed. R. Civ. P. 60(a) permits a district court to correct clerical mistakes in the judgment without leave of the appellate court up to the time the appeal is docketed in the appellate court. As of today, petitioners' appeal has not been docketed in the court of appeals. Therefore, I am directing the clerk to enter immediately an amended judgment dismissing this *action* without prejudice. This modification of the judgment does not affect the timeliness of petitioners' appeal. See Local 1545 v. Inland Steel Coal. Co., 876 F.2d 1288, 1292 n. 4 (7th Cir.1989) ("The entry of an order correcting a clerical mistake pursuant to Rule 60(a) does not start the time for appeal running again." (citations omitted)). Petitioners' March 30, 2003 notice of appeal remains intact.

I turn then to petitioners' notice of appeal, which is not accompanied by the $255 fee for filing an appeal. Therefore, I construe the notice to include a request for leave to proceed in forma pauperis on appeal. In determining whether petitioners may proceed in

forma pauperis on appeal, I must consider whether each petitioner is eligible for pauper status, whether any one of the petitioners is barred by the three-strikes provision in § 1915 from proceeding under that statute and whether petitioners' appeal must be certified as not taken in good faith. None of the petitioners has three strikes and I do not intend to certify that the appeal is not taken in good faith. As I advised petitioners in the March 8 order, I am assessing an initial partial payment of the fee for each petitioner who has signed the notice of appeal, which is all of them. Also, I advised petitioners that in the absence of a directive from the court of appeals to treat their notice as four separately filed appeals for which four separate $255 filing fees should be collected, I would treat petitioners' appeal as a single appeal for which each petitioner is jointly and severally liable.

From the trust fund account statements petitioners submitted to this court, I conclude that petitioners must submit initial partial payments in the following amounts:

Petitioner Dondras House $4.38

Petitioner Souvannaseng Boriboune $3.74

Petitioner Anthony Stevens'El . . . . . $ .67

Petitioner Efrain Campos $17.54

ORDER

IT IS ORDERED that petitioners' motion for leave to proceed in forma pauperis on

appeal is GRANTED conditionally on petitioners' submitting no later than April 26, 2004, a check or money order made payable to the clerk of court in the amounts indicated above. Petitioners are liable jointly and severally for the remainder of the $255 fee for filing their appeal unless the court of appeals directs otherwise. If, by April 26, 2004, petitioners fail to pay the initial partial payments assessed above, then I will notify the court of appeals of their noncompliance so that it may take whatever action it deems appropriate with respect to the appeal.

Entered this 5th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge