

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

TIMOTHY SCOTT ACKERMANN,

Plaintiff,

v.

JOHN POWERS,

Defendant.

ORDER

04-C-845-C

This case was dismissed on February 13, 2006, after plaintiff Timothy Ackermann failed repeatedly to respond to defendant's discovery requests. Judgment of dismissal was entered the following day, on February 14, 2006. On March 6, 2006, plaintiff filed a letter dated February 29, 2006, which I construe as an untimely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. That same day, plaintiff filed a notice of appeal.

Motions pursuant to Rule 59 must be made within ten days of the date of entry of the judgment in a case, excluding weekends and holidays. Ten working days from the February 14 date of entry of the judgment in this case, excluding the federal holiday that occurred on February 20, was March 1, 2006. Presumably, plaintiff did not mail his motion until at least March 1 (this is not a leap year, so there was no February 29), the date he

signed it. Therefore, he missed the deadline for filing his Rule 59 motion. Even if his motion was timely, however, nothing in it convinces me that I erred in granting defendant's motion to dismiss for plaintiff's failure to cooperate in providing discovery to which defendant was entitled.

Turning to plaintiff's notice of appeal, I note that it 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. Because plaintiff was granted leave to proceed in forma pauperis in this court, he "may proceed on appeal in forma pauperis unless. . .the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Fed. R. App. P. 24(a). Upon review of the record, I cannot find that plaintiff is not entitled to proceed in forma pauperis on appeal, and I cannot certify that an appeal would be taken in bad faith.

ORDER

IT IS ORDERED that plaintiff's motion to alter or amend the judgment entered in this case on February 14, 2006, is DENIED as untimely.

Further, plaintiff may proceed in forma pauperis on appeal because I do not find that he is not entitled to proceed in forma pauperis on appeal, and I cannot certify that an appeal

would be taken in bad faith.

Entered this 20th day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge