

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

FREDERICK ROGERS,

Plaintiff,

v.

C.O. HERWIG and
MATTHEW FRANK,

Defendants.

ORDER

04-C-977-C

FREDERICK ROGERS,

Plaintiff,

v.

C.O. SCHEFFER,

Defendant.

04-C-979-C

A judgment was entered in case no. 04-C-977-C on March 14, 2006, following a jury trial on plaintiff's claim against defendant Herwig and a verdict in defendant's favor. (Plaintiff's claim against defendant Frank was dismissed at the outset of this action for plaintiff's failure to allege his personal involvement in any alleged unconstitutional act.)

Earlier, on November 3, 2005, judgment was entered in favor of the defendant in case no. 04-C-979-C following a decision on cross motions for summary judgment. Now plaintiff has filed a notice of appeal. However, it is not at all clear in which of his cases plaintiff wishes his notice of appeal to be filed. Plaintiff has written the caption of his appeal as Frederick Rogers v. C.O. Herwig, suggesting that he intended the appeal to be filed in case no. 04-C-977-C. However, he has written the case no. as 04-C-979-C. To make matters even more confusing, he indicates that he is appealing from a judgment purportedly entered in one of these two cases in June 2006. Neither case was closed in June of 2006. Each was closed considerably earlier.

Because he is a prisoner, plaintiff's filing of a notice of appeal triggers his obligation to pay the \$455 fee for filing an appeal, even if the Court of Appeals for the Seventh Circuit were to dismiss the appeal immediately as untimely. (Plaintiff's time for filing an appeal in case no. 04-C-979-C would have expired in December of 2005 and his time for filing an appeal in case no. 04-C-977-C would have expired in April of 2006. Plaintiff's notice of appeal is dated September 29, 2006, well outside either deadline. Nevertheless, only the court of appeals may determine whether it has jurisdiction to entertain an appeal. Hyche v. Christensen, 170 F.3d 769, 770 (7th Cir.1999). The district court's role with respect to an appeal is limited. A district court has authority to deny a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 only if the plaintiff is barred from proceeding as a

pauper under the three strikes provision in 28 U.S.C. § 1915(g), the appeal is in not taken in good faith or the party fails to show that he is indigent.

Whether plaintiff's appeal is intended to be taken in case no. 04-C-979-C or 04-C-977-C, I do not intend to certify that is not taken in good faith. Moreover, plaintiff does not have three strikes against him. However, I cannot tell whether plaintiff qualifies for indigent status on appeal because he has not submitted a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. Therefore, I will stay a decision on plaintiff's request for leave to proceed in forma pauperis on appeal pending his submission of the necessary trust fund account statement and a letter advising the court which of these two cases he wants to appeal.

ORDER

IT IS ORDERED that plaintiff Frederick Rogers's request for leave to proceed in forma pauperis on appeal is STAYED.

Further, IT IS ORDERED that plaintiff may have until October 25, 2006, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately April 6, 2006 and ending approximately October 6, 2006. In addition, he may have until that October 25, 2006, in which to advise the court which of his cases he wishes to appeal. If, by October 25, 2006, plaintiff fails to submit the required

trust account statement or show cause for his failure to do so, then I will deny his request for leave to proceed in forma pauperis on the ground that he has failed to show that he is entitled to indigent status on appeal. If plaintiff fails to indicate which of his cases he wishes to appeal, I will direct the clerk of court to file the notice in case no. 04-C-977-C, which concerns the parties plaintiff has named in his notice of appeal.

Entered this 5th day of October, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge