

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

ALEKSANDRA CICHOWSKI and
CEZARY CICHOWSKI,

ORDER

Plaintiffs,

05-C-262-C

v.

FRED D. HOLLENBECK; TOM CASEY; DEBBIE KING;
SAUK COUNTY; JUDGES GUY REYNOLDS
and EVENSON; DONNA MUELLER;
CARRIE WASTLICK; GENE WIEGAND;
BRANT BAILEY; CURAN HOLLENBECK AND ORTON, S.C.;
WAYNE MAFFEI; JENKS CROSS MERCER and MAFFEI LAW
FIRM; M&I BANK; DAVE GUTTER; MARK L. KRUEGER;
THE BANK OF MAUSTON; ROBERT FAIT;
TOM SCHMIDT; KELLY HONNOLD; and
SCOT SCHMIDT,

Defendants.

Plaintiffs have filed a notice of appeal from this court's order of August 15, 2005, dismissing defendants Ketty (Kelly) Bauer, Debra King, William Greenhalgh and Greenhalgh and Krueger, S.C. from this action for plaintiffs' failure to show that they have served these

defendants with their June 2, 2005 complaint.¹ In addition, it appears that plaintiffs wish to appeal this court's order of September 13, 2005, dismissing defendant "Peggy" for lack of service and denying plaintiff's "Motion to Reinstate [as defendants] Attorney Krueger and Greenhalgh and Krueger as well as Debra King."² Plaintiffs ask for leave to proceed on appeal in forma pauperis and have submitted an affidavit of indigency in support of that request. I construe plaintiffs' notice of appeal to include a request for the entry of final judgment pursuant to Fed. R. Civ. P. 54 as to former defendants Peggy, Debra King, and Greenhalgh and Krueger, S.C. (From the statement of issues plaintiffs intend to raise on appeal, it does not appear that plaintiffs object to the dismissal of former defendants William Greenhalgh and Ketty (Kelly Bauer).)

Fed. R. Civ. P. 54(b) provides in pertinent part:

[W]hen multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however, designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any

¹Although the notice of appeal is not signed by plaintiff Cezary Cichowski, he is presumed to have joined with his wife, Aleksandra Cichowski, in the appeal. Fed. R. App. P. 3(c)(2).

²For the sake of clarification, to the extent that plaintiffs sought in their latter motion to reinstate Mark Krueger as a defendant, their motion was unnecessary. Mark Krueger remains a defendant in this action. He has not been dismissed.

of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Under this rule, a judge has the power to enter final judgment whenever there are multiple parties following an order that finally resolves a party's liability even though the case continues in the district court between the other parties. She has the power, but not the duty. Doe v. City of Chicago, 360 F.3d 667, 673 (7th Cir. 2004). Here, there is "just reason for delay."

All of existing defendants in this lawsuit except the defendant judges and the Sauk County defendants have moved to dismiss plaintiffs' claims against them on the ground that the lawsuit is barred by the Rooker-Feldman doctrine and issue or claim preclusion. Before defendant Greenhalgh and Krueger, S.C. was dismissed from this suit for lack of service of process, it, too, had moved for dismissal on these grounds. In addition, there is pending a motion filed by former defendant Greenhalgh & Krueger, S.C. and others, contending that this action was filed to harass them and seeking sanctions against plaintiffs under Fed. R. Civ. P. 11. If these motions are resolved in defendants' favor, it will prove pointless for plaintiffs to argue on appeal that defendant Greenhalgh & Krueger, S.C. should not have been dismissed for improper service of process.

Plaintiffs suggests that defendant Greenhalgh and Krueger, S.C. is an "indispensable party" in this lawsuit, but they do not support this bald assertion with any facts that could

lead the court to credit the assertion.

Moreover, plaintiffs have no urgent need to appeal the dismissal of defendants Peggy and Debra King. Indeed, it is curious that plaintiffs wish to appeal their dismissal at all. Plaintiffs admit that they have not served defendant Peggy and that they did not intend to sue two Debra Kings. According to plaintiffs, there is only one Debra King. If that is so, then there is no reason for plaintiffs to be appealing the dismissal of the superfluous Debra King. One Debra King has been served with plaintiffs' complaint and remains a party to the action.

Under the circumstances of this case, I decline to enter final judgment as to former defendants Greenhalgh and Krueger, S.C., Debra King and Peggy so that plaintiffs can appeal the orders dismissing them from this lawsuit. Plaintiffs will remain free to challenge the propriety of the rulings after the entire case has been resolved.

Although I am not entering final judgment as to any defendant at this time, plaintiff's notice of appeal has been docketed. Under the court of appeals' standard procedure, the district court is to rule on a request for leave to proceed in forma pauperis on appeal even if the appeal has been ruled inappropriate. An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). I intend to so certify. As noted above, there is no arguable basis for plaintiff's appeal from the dismissal of defendant Peggy and the duplicate Debra King. Moreover,

nothing in the court's record reflects that plaintiffs served defendant Greenhalgh and Krueger, S.C. with their complaint. Because the issues plaintiffs appear to wish to raise on appeal are legally frivolous, their appeal must be certified as having been taken in bad faith.

One final matter requires attention. At one time, the Sauk County defendants were represented by two separate law firms. Now it appears that Daniel Jardine of the Jardine Law Office is the sole lawyer for these defendants. Defendant Carrie Wastlick is a Sauk County Deputy Clerk of Court. From the waiver of service of summons form that plaintiffs filed on August 29, 2005, it appears that Ms. Wastlick signed a waiver of service of a summons on May 6, 2005. Nevertheless, no lawyer has entered an appearance or filed a responsive pleading on her behalf. If, as I suspect, it was oversight that Mr. Jardine omitted defendant Wastlick's name from the answer he filed on behalf of the other Sauk County defendants, he will have to file an amended answer promptly.

ORDER

IT IS ORDERED that plaintiffs Aleksandra and Cezary Cichowski's request for entry of final judgment against defendants Greenhalgh and Krueger, S.C., Debra King and Peggy pursuant to Fed. R. Civ. P. 54 is DENIED.

Further, plaintiffs' motion for leave to proceed in forma pauperis on appeal is

DENIED because I must certify that the appeal is not taken in good faith.

Entered this 21st day of October, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge