

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

STEVEN D. STEWART,

Plaintiff,

ORDER

v.

05-C-293-C

C.O. BARR,

Defendant.

Plaintiff has filed a notice of appeal from the judgment entered in this action on August 23, 2006. In addition, he has asked for appointment of counsel to represent him on appeal. Because plaintiff's notice of appeal is not accompanied by the \$455 fee for filing an appeal, I construe the notice to include a motion for leave to proceed in forma pauperis. Like plaintiff's request for leave to proceed in forma pauperis on his complaint, his request for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether plaintiff's request must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g) or because the appeal is not taken in good faith. Plaintiff does not have three strikes against him, and I do not intend to certify that his appeal is not taken in good faith.

The only other hurdle to plaintiff's proceeding with his appeal in forma pauperis is the requirement that he be found indigent and, if he is indigent, that he pay an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). Plaintiff has not submitted the necessary trust fund account statement. Until he does so, I cannot determine whether he is indigent and, if he is, the amount of his initial partial payment.

With respect to plaintiff's motion for appointment of counsel to assist him with his appeal, his motion is not properly raised in this court. He is free to move the court of appeals for appointed counsel after a decision has been reached in this court on his motion for leave to proceed in forma pauperis on appeal.

Accordingly, IT IS ORDERED that plaintiff may have until October 9, 2006, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately March 14, 2006 to approximately September 14, 2006. If, by October 9, 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.

Entered this 19th day of September, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge