

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

JAMES JENKINS,

Plaintiff,

v.

JAMES WILSON and
TIM BENGSTON,

Defendants.

ORDER

05-C-609-C

Judgment was entered in this case on November 1, 2006, after a jury returned a verdict in defendants' favor. Now plaintiff has filed a notice of appeal. The notice is not accompanied by the \$455 fee required for filing an appeal. Therefore, I construe plaintiff's notice of appeal to include a motion for leave to proceed on appeal in forma pauperis.

As an initial matter, I note that plaintiff's appeal may be untimely. The deadline for filing the notice of appeal was December 1, 2006; he filed his notice of appeal on March 12, 2007. However, 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 not taken in good faith or the party fails to show that he is indigent.

Plaintiff has not accrued three strikes under § 1915(g) and I do not intend to certify that the appeal is taken in bad faith. From plaintiff's trust fund account statement, I conclude that he qualifies for indigent status. Further, I assess plaintiff an initial partial payment of the \$455 fee for filing his appeal in the amount of \$0.67.

IT IS ORDERED that plaintiff James Jenkins' request for leave to proceed in forma pauperis on appeal is GRANTED. Plaintiff may have until April 3, 2007, in which to submit a check or money order made payable to the clerk of court in the amount of \$0.67. If, by April 3, 2007, plaintiff fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

Further, the clerk of court is requested to insure that the court's financial records reflect plaintiff's obligation to pay the initial partial payment and the remainder of the \$455

fee in monthly installments.

Entered this 14th day of March, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge