

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

GERARD M. MOCNIK,

Plaintiff,

v.

DR. WILLIAMS,

Defendant.

ORDER

06-C-191-C

After a jury returned a verdict in defendant's favor, judgment was entered in this case on April 5, 2007. Now plaintiff has filed an untitled document which I construe as a motion for an enlargement of time to file an appeal or, in the alternative, a notice of appeal and a request for leave to proceed in forma pauperis on appeal. The motion for an enlargement of time to file an appeal will be denied as unnecessary. The motion for leave to proceed in forma pauperis on appeal will be stayed to allow plaintiff to submit a trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal so that he may be assessed an initial partial payment of the filing fee, as 28 U.S.C. § 1915 requires.

In support of his motion for an extension of time in which to file a notice of appeal,

plaintiff says that he does not believe he can adequately represent himself on appeal and wants time to find a lawyer willing to represent him. A party in a civil action such as this has 30 days from the date of entry of the judgment in which to file a notice of appeal, Fed. R. App. P. 4(a)(1)(A), and 30 days beyond that deadline in which to file a motion for extension of time in which to appeal, Fed. R. App. P. 4(a)(5), on a showing of good cause or excusable neglect. Extensions of time may not exceed 30 days after the original prescribed time for filing a notice of appeal expires or 10 days after the date on which the order granting the extension of time is entered, whichever is longer. Fed. R. App. P. 4(a)(5)(C).

Plaintiff is not asserting excusable neglect as the reason he wants an extension. Rather, I understand him to be saying that his hope of finding a lawyer willing to represent him on appeal constitutes good cause for allowing him more time to file a notice of appeal. I disagree, for two reasons. First, early in this case, when plaintiff moved for the appointment of counsel, he supported the motion with copies of letters from at least three lawyers who declined to assist him. There is no reason to believe that plaintiff will be any more successful in finding a lawyer on his own to represent him on appeal than he was in finding a lawyer to help him with his action in this court. Second, and perhaps more important, if I treat plaintiff's submission as a notice of appeal and grant his request to proceed in forma pauperis on appeal, plaintiff will be able to move the Court of Appeals for the Seventh Circuit to appoint counsel for the purpose of assisting him with his appeal. It

is often the case that the court of appeals will grant such requests. Therefore, I will deny plaintiff's request for an extension of time within which to file a notice of appeal and instead, treat his motion as a notice of appeal.

Because the appeal is not accompanied by the \$455 filing fee, I construe plaintiff's notice to include a request for leave to proceed in forma pauperis on appeal. Like plaintiff's request for leave to proceed in forma pauperis on his complaint, plaintiff's 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.

ORDER

IT IS ORDERED that plaintiff's motion for an enlargement of time within which to file a notice of appeal is DENIED.

Further, IT IS ORDERED that plaintiff's alternative request that his submission be treated as a notice of appeal is GRANTED. The notice of appeal is construed to include a request for leave to proceed in forma pauperis on appeal.

Finally, IT IS ORDERED that plaintiff may have until May 29, 2007, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately November 6, 2006 to approximately May 6, 2007. If, by May 29, 2007, plaintiff fails to submit the required trust fund 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 7th day of May, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge