

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

CLAYTON HARDY MELLENDER,

Plaintiff,

v.

ORDER

06-C-298-C

DANE COUNTY PRISON
HEALTH SERVICES at Dane
County Jail; SHERIFF GARY HAMBLIN;
CAPTAIN MIKE PLUMER; and DR. JOHN DOE,
Dane County, DR. YOUNG S. KIM,

Defendants.

Plaintiff Clayton Hardy Mellender was a prisoner at the New Lisbon Correctional Institution in New Lisbon, Wisconsin when he filed his complaint in this case. On March 28, 2007, a judgment of dismissal was entered against all of the defendants. Now plaintiff has filed a notice of appeal. Because the notice is not accompanied by the \$455 filing fee, I construe the notice to include a request for leave to proceed on appeal in forma pauperis.

Plaintiff is no longer a prisoner and was not a prisoner when he filed his notice of appeal. He notified the court in March of 2007 that he had been released from prison and is living in Madison. Because he is no longer a prisoner, plaintiff's request for leave to

proceed in forma pauperis on appeal is governed by Fed. R. App. P. 24, rather than the provisions of the 1996 Prisoner Litigation Reform Act that would otherwise require him to make an initial partial payment of the fee for filing his appeal and pay the remainder of the fee in monthly installments. Fed. R. App. P. 24(a) provides that if a plaintiff has been granted leave to proceed in forma pauperis in this court, he "may proceed on appeal in forma pauperis unless. . .the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Plaintiff was granted leave to proceed in forma pauperis in this court. Moreover, upon review of the record, I conclude that there is no reason to certify that an appeal would not be taken in good faith or that plaintiff is otherwise not entitled to proceed in forma pauperis on appeal.

ORDER

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

Entered this 20th day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge