

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

PEGGY ANN DUFF EL,

Plaintiff,

v.

J.C. PENNEY, INC.,

Defendant.

ORDER

06-C-744-C

After plaintiff failed to oppose defendant's motion for summary judgment within the time allowed in the preliminary pretrial conference order entered in this case on February 28, 2007, I granted defendant's motion in an opinion and order dated August 13, 2007. Judgment in defendant's favor was entered that same day. Now plaintiff has submitted documents titled "Notice of Appeal" and "Petitioner's Response in Opposition to Motion for Summary Judgment." Neither document reveals that plaintiff has served a copy on defendant's lawyers, as Fed. R. Civ. P. 5 requires. Although I could ignore plaintiff's submissions on that basis alone, I will send a copy of the documents to counsel for defendant with a copy of this order and address plaintiff's filings.

Plaintiff's "... Response in Opposition to Motion for Summary Judgment" appears

to be intended by plaintiff as her response to defendant's brief and proposed findings of fact in support of its motion for summary judgment. Therefore, I construe the response as including a motion for leave to file an untimely response to defendant's motion. That motion will be denied, because the response fails in its entirety to comply with this court's Procedures to be Followed on Motions for Summary Judgment, a copy of which was sent to the parties with the February 28, 2007 preliminary pretrial conference order. In particular, plaintiff did not respond to defendant's proposed findings of fact as the procedures require; her own factual statements are not followed by citations to evidence in the record to support them; and her purported documentary evidence is unauthenticated. Thus, even if plaintiff's response had been timely filed, nothing in her submission could have been considered in opposition to defendant's motion and the same decision would have been reached to grant the motion in defendant's favor.

As for plaintiff's notice of appeal, I note that it is unaccompanied by the \$455 fee for filing an appeal. Therefore, I construe the notice to include a request for leave to proceed in forma pauperis on appeal. Because plaintiff was granted leave to proceed in forma pauperis in this court, she "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." Fed. R. App. P. 24(a). Upon review of the record, I cannot find that plaintiff is not entitled to proceed in forma pauperis on

appeal, and I cannot certify that her appeal is not taken in good faith.

ORDER

IT IS ORDERED that plaintiff's motion for leave to file an untimely response to defendant's motion for summary judgment is DENIED.

Further, IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on appeal is GRANTED. I cannot certify that plaintiff's appeal is not taken in good faith.

Entered this 22nd day of August, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge