

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

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CHRISTOPHER M. SANDERS,

Plaintiff,

v.

WARDEN WALLACE, CAPTAIN CHADA  
and MS. LUNDMARK,

Defendants.

ORDER

11-cv-206-slc<sup>1</sup>

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Plaintiff Christopher Sanders has filed a notice of appeal from the court's May 11, 2011 order granting him leave to proceed on certain claims but denying him leave to proceed on the following claims: (1) defendant Ms. Lundmark violated plaintiff's constitutional rights by hindering his ability to get help with his inmate complaints, refusing to recuse herself from consideration of his grievance and rejecting the grievance he filed against her; (2) defendant Captain Chada violated his rights under the Fourteenth Amendment by holding an unfair disciplinary hearing; and (3) defendant Warden Wallace violated his constitutional rights by rejecting his appeal concerning defendant Lundmark.

Because the May 11, 2011 screening order is not a final order, I understand plaintiff

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<sup>1</sup> For the purpose of issuing this order, I am assuming jurisdiction over the case.

to be asking for certification that he can take an interlocutory appeal under 28 U.S.C. §1292(b).

28 U.S.C. § 1292(b) states in relevant part,

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

There is not a substantial ground for a difference of opinion on the question whether it was proper to dismiss the portions of the complaint identified above for plaintiff's failure to state a claim. Therefore, I will deny plaintiff's request for certification that he can take an interlocutory appeal from the May 11, 2011 order.

Nevertheless, plaintiff's filing of a notice of appeal triggers a financial obligation: he owes \$455 fee for filing his notice of appeal. Plaintiff has filed a motion for leave to proceed in forma pauperis with his appeal. A district court has authority to deny a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 for one or more of the following reasons: the litigant wishing to take an appeal has not established indigence, the appeal is in bad faith or the litigant is a prisoner and has three strikes. § 1915(a)(1), (a)(3) and (g). Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998). I will deny plaintiff's request because I am certifying that his appeal is not taken in good faith.

In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals

instructed district courts to find bad faith in cases in which a plaintiff is appealing the same claims the court found to be without legal merit. Lee v. Clinton, 209 F.3d 1025, 1027 (7th Cir. 2000). Plaintiff is trying to appeal the same claims on which I denied him leave to proceed. Because plaintiff's appeal has no legally meritorious basis, I must certify that it is not taken in good faith.

Because I am certifying plaintiff's appeal as not having been taken in good faith, he cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Under Fed. R. App. P. 24, he has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. With his motion, he must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), together with a statement of the issues he intends to argue on appeal. Also, he must send along a copy of this order. Plaintiff should be aware that he must file these documents in addition to the notice of appeal he has filed previously. If he does not file a motion requesting review of this order, the court of appeals might choose not to address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require him to pay the entire \$455 filing fee before it considers his appeal. If he does not pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal.

Finally, plaintiff has filed a motion for appointment of counsel on appeal. However, that motion is not properly raised in this court. If plaintiff wishes to be appointed counsel

on appeal, he will have to make his request directly to the Court of Appeals for the Seventh Circuit.

## ORDER

IT IS ORDERED that

1. Plaintiff Christopher Sanders's motion for the court to certify that an interlocutory appeal may be taken from the May 11, 2011 order in this case, dkt. #10, is DENIED.

2. Plaintiff's request for leave to proceed in forma pauperis on appeal, dkt. #12, is DENIED. The clerk of court is directed to insure that plaintiff's obligation to pay the \$455 fee for filing his appeal is reflected in the court's financial records.

3. Plaintiff's motion for appointment of counsel on appeal, dkt. #10, is DENIED without prejudice to his refiling it with the Court of Appeals.

Entered this 5th day of July, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge