

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

TERRENCE BUCHANAN,

Plaintiff,

v.

JONATHAN WEAVER,

Defendant.

ORDER

12-cv-408-wmc
Appeal no. 15-3503

On April 16, 2014, the court dismissed this case without prejudice for want of prosecution under Federal Rule of Civil Procedure 41(b) in light of plaintiff Terrance Buchanan failure to: (1) appear at two preliminary pretrial conferences; (2) update his current address; and (3) respond to the court's order to show cause why his case should not be dismissed for failure to prosecute. Six months after his case was dismissed, and nearly a year after the court granted him leave to proceed on his false imprisonment and conversion claims, Buchanan filed a motion to reopen the case. (Dkt. #35.)

Taking all of the equities into consideration, particularly Buchanan's long delay in seeking relief, the court explained in denying his motion that Buchanan did not show that there were exceptional circumstances justifying relief under Rule 60(b). In particular, the court considered and rejected the following justifications for delay offered by Buchanan: (1) his cell phone battery died the day of the second scheduled preliminary pretrial conference and he did not have a charger; (2) three days after the second conference, he was arrested before he could deliver a letter explaining his failure to appear; (3) once he was incarcerated, he lacked money and envelopes to send a letter; (4) when he was finally able to send the court a letter, the Dane County Jail provided him with the wrong address; and (5) when he

was eventually alerted to the address error (after the letter was returned to sender) and he finally obtained the correct address, he then contacted the court. Now before the court is Buchanan's request for leave to proceed *in forma pauperis* on appeal.

A party who was permitted to proceed *in forma pauperis* in the district court may do so on appeal unless the court "certifies that the appeal is not taken in good faith." Fed. R. App. P. 24(3)(A); *see also* 28 U.S.C. § 1915(a)(3). Here, the court dismissed this case for want of prosecution and denied Buchanan's motion to reopen the case after finding that his repeated, lengthy delays in making any effort to prosecute his lawsuit, or even to notify the court of the reasons for his failure to do so were either within his control or, if not, did not justify his continued delay or failure at any time to call the clerk's office and request relief from the court's schedule.

Still, the court cannot certify that Buchanan's appeal is not taken in good faith. Accordingly, Buchanan's request for leave to proceed *in forma pauperis* on appeal will be granted.

From the financial information that Buchanan provides, the court finds that he lacks sufficient means to pre-pay the \$505.00 appellate docketing fee that he qualifies as indigent. Because it does not appear that Buchanan has filed his appeal in bad faith or that pauper status is otherwise precluded by Fed. R. App. P. 24(a), the court will grant his motion for leave to proceed *in forma pauperis*.

Although Buchanan has been found eligible to proceed *in forma pauperis*, the PLRA requires indigent inmates to pay the full amount of the docketing fee for his notice of appeal (\$505) in increments, starting with an initial partial payment, pursuant to the

formula found in 28 U.S.C. § 1915(b)(1)-(2). Based on his inmate trust fund account statement, the court finds that Buchanan is able to make an initial partial filing fee payment of \$0.53, which will be due no later than January 7, 2016. Thereafter, Buchanan shall pay the remainder of the \$505 appellate docketing fee in monthly installments according to 28 U.S.C. § 1915(b)(2).

ORDER

IT IS ORDERED that:

1. Plaintiff Terrance Buchanan's notice of appeal is not taken in bad faith for purposes of Fed. R. App. P. 24(a)(3).
2. Buchanan's motion for leave to proceed *in forma pauperis* (dkt. # 42) is GRANTED.
3. No later than January 7, 2016, Buchanan shall submit a check or money order made payable to the Clerk of Court in the amount of \$0.53 as an initial partial payment of the docketing fee for his appeal. Thereafter, Buchanan shall pay the remainder of the \$505 appellate docketing fee in monthly installments according to 28 U.S.C. § 1915(b)(2). If Buchanan does not have the money to make the initial partial appeal payment from his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account.

4. Buchanan is advised that if he fails to make the initial partial fee payment as directed, the clerk's office will alert the Seventh Circuit, which may result in the dismissal of his appeal.

Entered this 17th day of December, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge