

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

QUINCY M. NERI,

Plaintiff,

v.

SENTINEL INSURANCE COMPANY LTD and
ERIC FERGUSON dba White School Studios,

Defendants.

ORDER

13-cv-382-bbc

Judgment was entered in this case on August 2, 2013, denying plaintiff Quincy M. Neri leave to proceed and dismissing this case under the theory of claim preclusion. I determined that plaintiff was precluded from proceeding by a final judgment entered in Neri v. Monroe, 11-cv-429-slc, in which the court entered summary judgment for defendants, after finding that plaintiff did not have a valid copyright in the same sculpture that was at issue in that case as well as the present case. Order, dkt. #152, 11-cv-429-slc. Now plaintiff has filed a notice of appeal, a request for leave to proceed on appeal in forma pauperis and three motions to supplement the appellate record.

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 taken in bad faith or the litigant is a prisoner and has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d

780, 781 (7th Cir. 1998). None of these reasons apply to the present case, so I will grant plaintiff's motion for leave to proceed in forma pauperis on appeal.

In fact, it is possible that the court of appeals will conclude that plaintiff does not even need to appeal this judgment. On August 12, 2013, the court of appeals issued a decision vacating the judgment in case no. 11-cv-429-slc and remanding the case to Magistrate Judge Crocker for further proceedings. Order, Neri v. Monroe, no. 12-3204 (7th Cir. Aug. 12, 2013). Because the judgment in that case has been vacated, I will vacate the judgment in the present case as soon as this court reassumes jurisdiction over the case. May v. Sheahan, 226 F.3d 876, 879 (7th Cir. 2000) (filing of a notice of appeal "divests the district court of its control over those aspects of the case involved in the appeal").

Turning to plaintiff's motions to supplement the appellate record, I will deny the motions because plaintiff's proposed supplemental documents, transcripts from state court proceedings and various records from case no. 11-cv-429-slc, will not assist the court of appeals in ruling on the appeal (an appeal that is likely moot in any case). This court will not issue further rulings in this case until the court of appeals has disposed of plaintiff's appeal.

Additionally, given the status of this case, it is possible that the court of appeals will dismiss the appeal in its entirety and waive plaintiff's filing fee.

ORDER

IT IS ORDERED that

1. Plaintiff Quincy M. Neri's request for leave to proceed in forma pauperis on

appeal, dkt. #9, is GRANTED.

2. Plaintiff's motions to supplement the appellate record, dkts. ##15, 17, 18, are DENIED.

3. The court will await the court of appeals' disposition of plaintiff's appeal before proceeding further in this case.

Entered this 22d day of October, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge