

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

SAMUEL MYLES

OPINION AND ORDER

Plaintiff,

14-cv-661-bbc

v.

RAVI GUPTA and
UNITED STATES,

Defendants.

Plaintiff Samuel Myles, a prisoner incarcerated at the Federal Correctional Institution in Milan, Michigan, filed this pro se lawsuit against defendants Ravi Gupta and the United States in which he is alleging that defendants violated his Eighth Amendment rights and the Federal Tort Claims Act by prescribing a combination of blood pressure drugs that caused him to faint and break his ankle. In an order entered on April 22, 2016, I granted defendant's motion for summary judgment on the ground that plaintiff had failed to create a genuine issue of material fact with respect to whether defendants breached the applicable standard of care. After the clerk of court entered judgment in favor of defendants and dismissed the case, plaintiff filed a notice of appeal. Dkt. #136. On May 2, 2016, plaintiff's notice of appeal was forwarded to the Court of Appeals for the Seventh Circuit. Dkt. #138. I construed plaintiff's notice of appeal as including a request to proceed in forma pauperis on appeal, which I denied in accordance with 28 U.S.C. § 1915(g) because plaintiff has filed

at least five lawsuits that have been dismissed as frivolous or for failing to state a claim. Dkt. #139.

One week after I forwarded plaintiff's notice of appeal to the court of appeals, plaintiff filed a motion to strike his notice of appeal and a motion for reconsideration of my order denying his request for assistance with the recruitment of counsel. Dkts. ##141, 142. I issued an order denying plaintiff's motion for reconsideration on May 16, 2016. That same day plaintiff filed two separate motions for an extension of time under Federal Rule of Appellate Procedure 4(c) (which I am construing as motions for an extension of time under Federal Rule of Appellate Procedure 4(a)(5)(A)(ii)). Then on May 23, 2016, plaintiff filed a motion for leave to proceed in forma pauperis on appeal; and on May 26, 2016, plaintiff filed a motion for extension of time to pay the appellate filing fee. For the reasons set forth below, I am denying all of plaintiff's motions.

Plaintiff's motions to extend the time for filing his appeal under Federal Rule of Appellate Procedure 4(a)(5)(A)(ii) are unnecessary because plaintiff's notice of appeal was timely filed. The Court of Appeals for the Seventh Circuit has jurisdiction over this action and appellate proceedings are ongoing.

As for plaintiff's motion for an extension of time to pay his appellate filing fee, this motion was filed in the wrong court. When plaintiff filed a notice of appeal on May 2, 2016, his case was transferred from this court to the court of appeals. Accordingly, if plaintiff needs an extension of time to comply with any filing or fee requirement related to his appeal, he should direct his request for such an extension to the court of appeals, not this

court.

Finally, turning to plaintiff's motion for leave to proceed in forma pauperis on appeal, I will construe this motion as a motion for reconsideration of the court's May 6, 2016 order denying plaintiff leave to proceed in forma pauperis. In that order, I denied plaintiff leave to appeal in forma pauperis because he had "struck out" under 28 U.S.C. § 1915(g). Plaintiff's motion does not challenge the court's finding that he had three strikes. Instead, he attempts to avail himself of the "imminent danger" exception to § 1915(g)'s three strike rule. However, plaintiff fails to describe the "imminent danger" he is allegedly facing and his claims in the case—that defendants negligently prescribed him certain hypertension drugs on one occasion in 2012—fall far short of supporting such a finding. Accordingly, plaintiff's motion for reconsideration of the court's order denying him leave to appeal in forma pauperis on the ground that he is "under imminent danger of serious physical injury" is denied. As noted in the court's May 6 order, if plaintiff believes that this court erred in denying his motion for leave to proceed in forma pauperis on appeal, he should file a motion with the court of appeals challenging this court's decision.

ORDER

IT IS ORDERED that

1. Plaintiff Samuel Myles's motions for extension of time under Federal Rule of Appellate Procedure 4, dkt. ## 144, 145 and 150, are DENIED.
2. Plaintiff's motion for extension of time to pay his appellate filing fee, dkt. #154,

is DENIED.

3. Plaintiff's motion for leave to proceed in forma pauperis on appeal, dkt. #151, is DENIED.

Entered this 14th day of June, 2016.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge