

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

JOSEPH REINWAND,

Plaintiff,

v.

FRANK BLACKBURN,

Defendants.

ORDER

15-cv-799-bbc
App. No. 16-1525

On February 12, 2016, I denied pro se plaintiff Joseph Reinwand leave to proceed and dismissed this case for plaintiff's failure to state a claim upon which relief may be granted. Now plaintiff has filed a notice of appeal and requests leave to proceed in forma pauperis on appeal. Plaintiff's request for leave to proceed in forma pauperis on appeal will be denied, because I am certifying that his appeal is not taken in good faith. Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998) (authorizing district court to deny request to proceed in forma pauperis on appeal if appeal is "not taken in good faith"). The claims plaintiff intends to appeal were dismissed originally as part of an ongoing suit plaintiff filed related to his disability benefits. Reinwand v. National Electrical Benefit Fund, 14-845-bbc (W.D. Wis.). After I dismissed plaintiff's claims against defendant Blackburn in the earlier filed and related action, plaintiff filed those same claims in this new case. A claim that has been dismissed previously for failing to state a claim is frivolous if it is re-filed as part of a separate suit. Accordingly, I

conclude that plaintiff's appeal from this re-filed claim 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 \$505 filing fee unless the court of appeals gives him permission to do so. Under Fed. R. App. P. 24, plaintiff 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), with a statement of 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 plaintiff does not file a motion requesting review of this order, the court of appeals might not address the denial of leave to proceed in forma pauperis on appeal. Instead, it may require plaintiff to pay the entire \$505 filing fee before it considers his appeal. If plaintiff does not pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal and order the court to arrange for collection of the fee from plaintiff's prison account.

ORDER

IT IS ORDERED that

1. Plaintiff Joseph Reinwand's request for leave to proceed in forma pauperis on appeal, dkt. #8, is DENIED. I certify that his appeal is not taken in good faith. The clerk

of court is directed to insure that plaintiff's obligation to pay the \$505 fee for filing his appeal is reflected in the court's financial records.

Entered this 31st day of March, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge