

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

---

LIU WENFANG,

Plaintiff,

ORDER

v.

Case No. 15-cv-385-wmc  
15-cv-669-wmc

RUSSELL SYLVAN SOEHNER, II, *et al.*

Defendants.

---

On March 2, 2016, the court denied plaintiff Liu WenFang's motion for leave to file an amended complaint in closed case no. 15-cv-395, and denied her leave to proceed on new claims in case. no. 15-cv-699, on the grounds that the court lacked subject matter jurisdiction over the claims. Judgment was entered in 15-cv-699 on the same day. Liu has now filed a notice of appeal, (dkt. #21 in case no. 15-cv-385 and dkt. #11 in case no. 15-cv-669), and a request for leave to proceed *in forma pauperis* on appeal, (dkt. #22 in case no. 15-cv-385 and dkt. #12 in case no. 15-cv-669). Her request to proceed *in forma pauperis* will be denied.

In determining whether a litigant is eligible to proceed *in forma pauperis* on appeal, the court must find that she is indigent and, in addition, that the appeal is taken in good faith for purposes of Fed. R. App. P. 24(a)(3). See 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the court certifies in writing that it is not taken in good faith."). Although Liu has been found eligible to proceed as an indigent litigant previously in these cases, the court cannot certify that the appeal is taken in good faith. In that respect, the United States Court of Appeals for the Seventh Circuit has instructed district courts to find bad faith where a plaintiff is appealing claims that have been dismissed as frivolous or

without legal merit. *See Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). To the extent that Liu is attempting to raise on appeal the claims she raised in her complaint and proposed amended complaint, the court certifies that the appeal is not taken in good faith for purposes of Fed. R. App. P. 24(a)(3). There can be no dispute that the court lacks subject matter jurisdiction over the claims. Accordingly, her request for leave to proceed *in forma pauperis* on appeal must be denied.

#### ORDER

IT IS ORDERED that:

- (1) The court CERTIFIES that plaintiff Liu WenFang's appeal is not taken in good faith for the purposes of Fed. R. App. P. 24(a)(3).
- (2) Plaintiff's request for leave to proceed *in forma pauperis* on appeal, (dkt. #22 in case no. 15-cv-385 and dkt. #12 in case no. 15-cv-669), is DENIED.
- (3) Although this court has certified that plaintiff's appeal is not taken in good faith under Fed. R. App. P. 24(a)(3), plaintiff is advised that she may challenge this finding pursuant to Fed. R. App. P. 24(a)(5), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, United States Court of Appeals for the Seventh Circuit, within thirty (30) days of the date of this order. With that motion, plaintiff must include an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), along with a copy of this order and a statement of the issues that she intends to argue on appeal. Plaintiff should be aware that she must file these documents in addition to the notice of appeal that she filed previously.

Entered this 24th day of March, 2016.

BY THE COURT:

/s/

---

WILLIAM M. CONLEY  
District Judge