

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JOHN S. MYZER,

Plaintiff,

v.

GEORGE W. BUSH, et al.,

Defendants.

CIVIL ACTION

No. 03-2504-KHV

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's Application To Proceed [On Appeal] Without Prepaying Fees Or Costs (Doc. #148) filed April 5, 2018.

Under 28 U.S.C. § 1915(a), a federal court may authorize commencement of an appeal without prepayment of fees by a person who lacks financial means. A court should not deny in forma pauperis status because a party is not "absolutely destitute." Brewer v. City of Overland Park Police Dept., 24 F. App'x 977, 979 (10th Cir. 2002) (quoting Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948)). In construing the application and financial affidavit, district courts compare a party's monthly income with monthly expenses and also consider a party's assets. See United States v. Schneider, 559 F. App'x 770, 772 (10th Cir. 2014); see Scherer v. Kansas, No. 06-2446-JWL, 2006 WL 3147731, at *2 (D. Kan. Nov. 1, 2006) (courts should consider assets in addition to income).

Plaintiff's financial affidavit indicates that he has no regular income, monthly expenses of \$1,010 and assets worth approximately \$23,500 – \$2,000 in cash, \$9,000 in stock and \$11,500 in an Individual Retirement Account. Doc. #148. Because plaintiff's monthly expenses greatly exceed

his monthly income, plaintiff financially qualifies for in forma pauperis status.

Rule 24(a)(1), Fed. R. App. P., directs that an application to appeal in forma pauperis include the party's claims for redress and the issues the party intends to present on appeal. Rule 24(a) requires such information because the Court can deny in forma pauperis status when it finds that the appeal is not taken in good faith. See Fed. R. App. P. 24(a)(4)(B); 28 U.S.C. § 1915(a)(3). To show a good faith appeal, a party must demonstrate "the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." Rolland v. Primesource Staffing, L.L.C., 497 F.3d 1077, 1079 (10th Cir. 2007); DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991).

Plaintiff's application does not include his claims for redress or state issues that he intends to present on appeal. See Application To Proceed [On Appeal] Without Prepaying Fees (Doc. #148); see also Notice Of Appeal (Doc. #147) filed April 5, 2018. As a result, the Court finds no reasoned arguments for appeal and certifies that his appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3). Accordingly, defendant's motion to proceed in forma pauperis is overruled.

IT IS THEREFORE ORDERED that plaintiff's Application To Proceed [On Appeal] Without Prepaying Fees Or Costs (Doc. #148) filed April 5, 2018 is **OVERRULED**. **The Clerk is directed to forward a copy of this order to the Tenth Circuit Court of Appeals.**

Dated this 23rd day of April, 2018 at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge