

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOAN HEFFINGTON,
On behalf of Minor Son, G.M.,

Plaintiffs,

Vs.

No. 05-4028-SAC

DISTRICT COURT OF SEDGWICK
COUNTY, WICHITA, KANSAS,
NOLA FOULSTON, and
JULIA CRAFT-ROCHAT,

Defendants.

MEMORANDUM AND ORDER

This case comes before the court on plaintiff's motion for leave to appeal in forma pauperis (Dk. 40), and motion for appointment of counsel (Dk. 41).

On June 17, 2005, this court granted defendants' motion to dismiss the case. Dk. 26. Among other matters, the court found that plaintiff lacked standing to bring suit on behalf of her son as next friend, and had suffered no injury-in-fact. The court subsequently denied

plaintiff's motion for reconsideration of the dismissal, as well as plaintiff's motion to set aside the court's order on motion for reconsideration. *See* Dks. 28, 31, 32 and 35. On September 26, 2005, plaintiff filed a notice of appeal, and the record has since been transmitted to the Tenth Circuit.

Leave to Appeal In Forma Pauperis

Presuming that this motion is within this court's jurisdiction, *see* Fed. R. App. P. 24(a), it is denied for lack of standing. Because plaintiff has no standing to prosecute this case, she has no standing to file this motion. This court shall not exercise any power on behalf of a party who has not first established standing.

Appointment of Counsel

Plaintiff additionally requests appointment of counsel for purposes of appeal. Plaintiff requested, but did not receive, appointment of counsel during the course of this litigation in district court. *See* Dk. 3.

The appointment of counsel for purposes of appeal is a matter within the jurisdiction of the Court of Appeals. *Gilmore v. Gregg*, 1993 WL 245990, *1 (D. Kan. 1993). *See e.g., Ely v. Hill*, 35 Fed. Appx. 761,

765 (10th Cir. 2002) (Tenth Circuit considered and denied plaintiff's motion for appointment of counsel on appeal from district court's dismissal of § 1983 case); *see generally, Lancaster v. Indep. Sch. Dist. No. 5*, 149 F.3d 1228, 1237 (10th Cir. 1998) (the filing of a notice of appeal usually divests a district court of jurisdiction over the issues on appeal). Had this motion been within this court's jurisdiction, it would have been denied for plaintiff's lack of standing to prosecute this case.

IT IS THEREFORE ORDERED that plaintiff's motion for leave to appeal in forma pauperis (Dk. 40) is denied, and plaintiff's motion for appointment of counsel (Dk. 41) is denied.

Dated this 27th day of October, 2005, Topeka, Kansas.

s/ Sam A. Crow

Sam A. Crow, U.S. District Senior Judge