

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

KEITH V. MENEFEE,

Plaintiff,

v.

CASE NO. 08-3314-SAC

ROGER WERHOLTZ,  
et al.,

Defendants.

O R D E R

This matter is before the court upon plaintiff's Notice of Appeal (Doc. 21) and Motion for Leave to Appeal in forma pauperis (Doc. 24). Having considered these filings, the court finds as follows.

At the time this action was dismissed, Keith Menefee was the only plaintiff<sup>1</sup>. He was granted leave to proceed in this action without prepayment of fees. Rule 24(a)(3) of the Federal Rules of Appellate Procedure in pertinent part provides:

Prior Approval: A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless:

---

<sup>1</sup> Mr. Blevin's claims were previously severed, and a separate case was opened with Blevins as the only plaintiff (See Blevins v. Werholtz, Case No. 09-3033-SAC). In his separate case, Blevins has also filed a Notice of Appeal, which is simply a copy of Menefee's Notice of Appeal. The court is not convinced that Blevins has properly filed an appeal of the order or judgment of dismissal in this case, since he was not a party to this action at the time it was dismissed or when these documents were filed and the order did not dispose of his claims, which were transferred to his separate case. Blevins' Notice of Appeal and his Motions for Leave to Appeal in forma pauperis were properly filed in Case No. 09-3033, and shall be considered therein.

(A) the district court-before or after the notice of appeal is filed-certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis . . . ."

Id. The court finds that plaintiff Menefee is allowed to proceed without prepayment of fees on appeal herein pursuant to FRAP Rule 24(a)(3)<sup>2</sup>.

**IT IS THEREFORE ORDERED** that plaintiff Menefee's Application to Proceed Without Prepayment of Fees on Appeal (Doc. 24) is granted<sup>3</sup>. Plaintiff's payments will continue as previously directed until plaintiff satisfies the balance of the district court filing fee owing in this matter, and then will be applied to the appellate filing fee of \$455.00.

**IT IS FURTHER ORDERED** that the name of Dustin S. Blevins is stricken from the Notice of Appeal (Doc. 21) for the reason that Mr. Blevins was not a party to this action at the time it was filed, and may not properly file pleadings herein.

Copies of this order shall be mailed to plaintiff, to the

---

<sup>2</sup> The appellate filing fees total \$455.00. At the commencement of this action in district court, plaintiff paid an initial partial district court filing fee and was granted leave to proceed in forma pauperis. Under 28 U.S.C. 1915(b)(1), he remains obligated to pay the remainder of the full \$350.00 district court filing fee by making periodic payments from his inmate trust fund account as detailed in 28 U.S.C. 1915(b)(2), and has made another such payment. Because plaintiff has not yet satisfied the district court fee obligation, the court grants him leave to proceed in forma pauperis on appeal without payment of an initial partial filing fee. Any funds advanced to the court by plaintiff must first be applied to plaintiff's outstanding fee obligation. Plaintiff's payments toward the \$455.00 appellate court filing fee in this matter will commence upon satisfaction of the earlier obligation and will be calculated according to 28 U.S.C. § 1915(b)(2). Plaintiff is directed to cooperate with his custodian and any future custodian to authorize the disbursement of funds to satisfy these payments. The Finance Officer of the facility where plaintiff is housed is advised by a copy of this order of these assessments.

<sup>3</sup> Blevins has not filed a Motion for Leave to Appeal in forma pauperis in this case.

Finance Officer where plaintiff is currently confined, and to the Clerk of the United States Court of Appeals for the Tenth Circuit.

**IT IS SO ORDERED.**

Dated this 4<sup>th</sup> day of August, 2009, at Topeka, Kansas.

s/Sam A. Crow  
U. S. Senior District Judge