

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

WALTER VEGA,

Plaintiff,

v.

Case No: 2:16-cv-84-FtM-38CM

STATE OF FLORIDA, FRED R.
KAHLE, CITY OF FORT MYERS,
JOHN TOBECK, ALLIGATOR
TOWING COMPANY and UNION
CORRECTIONAL INSTITUTION
MEDICAL DEPT.,

Defendants.

OPINION AND ORDER¹

This matter comes before the Court on Plaintiff's Amended Notice of Appeal ([Doc. 64](#)) filed January 2, 2018. Plaintiff seeks to appeal the Court's endorsed Order entered on December 4, 2017 (Doc. 59), which Plaintiff characterizes as a "final judgment." *Id.* Plaintiff accompanied his Amended Notice of Appeal with a Motion for Permission to Appeal *In Forma Pauperis* ([Doc. 65](#)).

To be appealable, an order must be final. [28 U.S.C. § 1291](#). "A final decision is 'one which ends the litigation on the merits and leaves nothing for the court to do but

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execute the judgment.” [CSX Transp., Inc. v. City of Garden City](#), 235 F.3d 1325, 1327 (11th Cir. 2000) (citations omitted). Otherwise, it must fall within one of the specific classes of interlocutory orders. [28 U.S.C. § 1292](#).

The Order Plaintiff seeks to appeal is not a final order or otherwise subject to interlocutory appeal. The December 6, 2017 Order (Doc. 59) that Plaintiff seeks to challenge was entered after the Court entered judgment.² The challenged Endorsed Order granted in part, and denied in part, Plaintiff’s Motion to Withdraw Motion for Waiver of Rights. More specifically, the challenged Endorsed Order granted Plaintiff’s motion to withdraw his motion to voluntarily dismiss the action, but found Plaintiff’s request to stay the case as moot because of the Court’s earlier dismissal.

Thus, under Rule 24(a) of the Federal Rules of Appellate Procedure, Petitioner’s appeal is not taken in good faith. As a result, Plaintiff will be required to pay the \$505.00 appellate filing and docketing fees. Because the Court has certified that this appeal is not taken in good faith, any request to proceed *in forma pauperis* should be sent directly to the Eleventh Circuit Court of Appeals. See [Fed. R. App. P. 24\(a\)](#) (5).

Accordingly, it is now

ORDERED:

Plaintiff Motion for Leave to Appeal *In Forma Pauperis* ([Doc. 65](#)) is **DENIED**.

² The Court dismissed this action under [28 U.S.C. § 1915\(e\)](#) on April 21, 2017 ([Doc. 34](#)). Judgment was entered on April 24, 2017 ([Doc. 35](#)). Plaintiff filed a notice of appeal on May 11, 2017 ([Doc. 37](#)). On January 4, 2018, the United States Court of Appeals for the Eleventh Circuit denied Plaintiff’s motion to proceed on appeal *in forma pauperis* and dismissed his appeal ([Doc. 67](#)).

DONE and **ORDERED** in Fort Myers, Florida this 8th day of February, 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record