UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

LINDA A. NASH and RICHARD M. ANNETTE,

Plaintiffs,

v. **Case No: 6:19-cv-885-RBD-DCI**

STATE OF FLORIDA FIFTH DISTRICT COURT OF APPEALS, RICHARD B. ORFINGER, WENDY W. BERGER, JAMES A. EDWARDS, BRIAN D. LAMBERT and JAY P. COHEN,

Defendants.

REPORT AND RECOMMENDATION

This cause comes before the Court for consideration without oral argument on the following motion:

MOTION:	**Motion to Appeal In Forma Pauperis (Doc. 33)**
FILED:	**July 14, 2023**

THEREON it is **Recommended** that the motion be **DENIED**.

On July 13, 2023, the *pro se* Plaintiff filed a notice of appeal directed to the Court's Order (Doc. 29) denying her motion to reopen this case (Doc. 25) and denying her "emergency" motion to join additional defendants (Doc. 27). In the Order, the Court ultimately described both motions as "gibberish with no coherent argument." Doc. 29. In the notice of appeal, which spans 97 pages including its exhibits, the Plaintiff again makes assertions and argument that are not coherent. *See* Doc. 30.

On July 14, 2023, Plaintiff filed an "Application to Proceed in District Court Without Prepaying Costs," which the undersigned construes as a motion for leave to appeal *in forma pauperis*. Doc. 33 (the Motion).[1]

An appeal may not be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3). The good faith standard is an objective standard. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). An appeal is not taken in good faith if the issues presented are frivolous. *Id*. The undersigned has reviewed the Court's Order, the notice of appeal, the Motion, and the documents attached to those filings. The undersigned finds that the basis of Plaintiff's intended appeal is unclear. That said, there is nothing in the notice of appeal or the Motion that demonstrates that the Court's bases for denying the motions were erroneous. Accordingly, the undersigned finds that Plaintiff has failed to raise any issues on appeal with arguable merit and, thus, the appeal is not taken in good faith. *See also* Doc. 23 (Eleventh Circuit Court of Appeals Opinion granting summary affirmance (issued April 1, 2020).

Accordingly, it is **RECOMMENDED** that:

1. The Motion (Doc. 33) be **DENIED**;
2. That the first-filed Application to Proceed in District Court Without Prepaying Costs (Doc. 32) be construed as a motion and **DENIED as moot**;
3. The Court certify the appeal is not taken in good faith; and
4. The Clerk be directed to notify the Eleventh Circuit in accordance with Fed. R. App. P. 24(a)(4).

The Clerk is directed to send a copy of this report to Plaintiff by regular and certified mail.

[1] Plaintiff first filed an unsigned version of this document (Doc. 32), and then filed a signed version (Doc. 33). The first, unsigned version is due to be denied as moot.

NOTICE TO PARTIES

The party has fourteen days from the date the party is served a copy of this report to file written objections to this report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. § 636(b)(1)(C). A party's failure to serve and file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1; 28 U.S.C. § 636(b)(1).

Recommended in Orlando, Florida on July 17, 2023.

DANIEL C. IRICK
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge
Counsel of Record
Unrepresented Party
Courtroom Deputy