APPENDIX A

No. 22-1867

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT ANNABEL II,

Plaintiff-Appellant,

v.

JOSEPH NOVAK, Law Librarian, et al.,

Defendants-Appellees.

ORDER

Before: BATCHELDER, Circuit Judge.

Pro se plaintiff Robert Annabel II, appeals the district court's order granting summary judgment in favor of the defendants in his lawsuit claiming unconstitutional retaliation. He moves to proceed in forma pauperis on appeal. *See* Fed. R. App. P. 24(a)(5).

In 2019, Annabel sued Law Librarian Joseph Novak, Captain Kevin Woods, and Deputy Warden John Christiansen at the Ionia Correctional Facility, pursuant to 42 U.S.C. § 1983. He alleged that Novak retaliated against him for submitting two grievances by issuing threatening-behavior and insolence misconduct reports. The April 10, 2016, threatening-behavior charge was dismissed, but the July 22, 2016, insolence charge was found meritorious by Woods and affirmed by Christiansen. Annabel therefore claimed retaliation in violation of his First Amendment rights.

The parties filed cross-motions for summary judgment. A magistrate judge recommended granting summary judgment in favor of the defendants because Annabel's frivolous and abusive grievances did not qualify as protected conduct. Over Annabel's objections, the district court adopted the magistrate judge's report and recommendation and granted summary judgment in favor of the defendants. It also denied Annabel permission to appeal in forma pauperis.

Annabel now moves this court for leave to proceed in forma pauperis. A party that makes the requisite showing of poverty will be granted leave to proceed in forma pauperis if his or her

appeal is being taken in good faith, i.e., is not frivolous. *See* 28 U.S.C. § 1915(a); *Callihan v. Schneider*, 178 F.3d 800, 804 (6th Cir. 1999). An appeal is frivolous "where it lacks an arguable basis either in law or in fact," *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), meaning that "it is based on legal theories that are indisputably meritless," *Brown v. Bargery*, 207 F.3d 863, 866 (6th Cir. 2000).

To prove a retaliation claim, Annabel must show that (1) he engaged in protected conduct, (2) an adverse action was taken against him that would deter a person of ordinary firmness from continuing to engage in that conduct, and (3) the adverse action was motivated, at least in part, by the plaintiff's protected conduct. *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc). The two grievances for which Novak issued misconduct reports primarily contain threats against Novak and support the district court's conclusion that the grievances were frivolous and abusive. Frivolous or abusive grievances do not qualify as protected conduct. *See Maben v. Thelen*, 887 F.3d 252, 264 (6th Cir. 2018). Accordingly, this appeal is not taken in good faith and Annabel is not entitled to proceed in forma pauperis.

The court **DENIES** the motion to proceed IFP. Unless Annabel pays the $505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

Annabel v. Novak

United States District Court for the Western District of Michigan, Southern Division

September 7, 2021, Decided; September 7, 2021, Filed

Case No. 1:19-cv-199

Reporter
2021 U.S. Dist. LEXIS 187026 *; 2021 WL 4445000

ROBERT ANNABEL, II #414234, Plaintiff, v. JOSEPH NOVAK, et al., Defendants.

Subsequent History: Adopted by, Summary judgment granted by, Certificate of appealability denied *Annabel v. Novak, 2021 U.S. Dist. LEXIS 185172, 2021 WL 4442969 (W.D. Mich., Sept. 28, 2021)*

Adopted by *Annabel v. Novak, 2022 U.S. Dist. LEXIS 159790, 2022 WL 4077837 (W.D. Mich., Sept. 6, 2022)*

Prior History: *Annabel v. Novak, 2019 U.S. Dist. LEXIS 67681, 2019 WL 1760131 (W.D. Mich., Apr. 22, 2019)*

Core Terms

kite, protected conduct, alleges, retaliation, misconduct, insolence, summary judgment, non-moving, grievance, charge a plaintiff, retaliatory, recommends, frivolous, reasons, summary judgment motion, fails

Counsel: **[*1]** Robert Wayne Annabel, plaintiff, Pro se, Adrian, MI.

For Joseph Novak, Law Librarian, Kevin Woods, Captain, John Christiansen, Deputy Warden, Defendants: Joseph Ho, MI Dept Attorney General (MDOC), Lansing, MI.

Judges: PHILLIP J. GREEN, United States Magistrate Judge. Hon. Robert J. Jonker.

Opinion by: PHILLIP J. GREEN

Opinion

REPORT AND RECOMMENDATION

This matter is before the Court on Defendants' Motion for Summary Judgment (ECF No. 100) and Plaintiff's Motion for Summary Judgment (ECF No. 103). Pursuant to *28 U.S.C. § 636(b)(1)(B)*, the undersigned recommends that Plaintiffs motion be denied, Defendants' motion be granted, and this matter terminated.

BACKGROUND

Plaintiff initiated this action against three Michigan Department of Corrections (MDOC) employees: (1) Librarian Joseph Novak; (2) Captain Kevin Wood; and (3) Deputy Warden John Christiansen. In his amended complaint, (ECF No. 27), Plaintiff alleges the following.

On April 10, 2016, Defendant Novak, seeking to retaliate against Plaintiff for filing a complaint against him, charged Plaintiff with "threatening behavior." But this charge was "so facially frivolous" that it was "quashed . . . immediately" by another MDOC official and was not pursued further.

On July 21, 2016, Plaintiff sent **[*2]** Defendant Novak a kite requesting that he stop falsely accusing Plaintiff of "having overdue [library] materials." Plaintiff also detailed in this kite other instances of Novak's misconduct. The following day, Defendant Novak charged Plaintiff with insolence based upon the content of Plaintiffs kite. Defendant Wood found Plaintiff guilty of this charge and, furthermore, expressly warned Plaintiff to stop filing complaints and grievances against Novak. Defendant Christiansen denied Plaintiffs subsequent appeal of this misconduct conviction.

Plaintiff alleges that Defendants Novak, Wood, and Christiansen all violated his *First Amendment* right to be free from unlawful retaliation. Specifically, Plaintiff alleges that Defendant Novak charged him threatening behavior and insolence for improper retaliatory reasons. Plaintiff further alleges that Defendants Wood and Christiansen convicted him of insolence and affirmed such, respectively, for improper retaliatory reasons.

Defendants now move for summary judgment. Plaintiff likewise moves for summary judgment.

SUMMARY JUDGMENT STANDARD

Summary judgment "shall" be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant **[*3]** is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party moving for summary judgment can satisfy its burden by demonstrating "that the respondent, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case." Minadeo v. ICI Paints, 398 F.3d 751, 761 (6th Cir. 2005). Once the moving party demonstrates that "there is an absence of evidence to support the nonmoving party's case," the non-moving party "must identify specific facts that can be established by admissible evidence, which demonstrate a genuine issue for trial." Amini v. Oberlin College, 440 F.3d 350, 357 (6th Cir. 2006).

While the Court must view the evidence in the light most favorable to the non-moving party, the party opposing the summary judgment motion "must do more than simply show that there is some metaphysical doubt as to the material facts." Amini, 440 F.3d at 357. The existence of a mere "scintilla of evidence" in support of the non-moving party's position is insufficient. Daniels v. Woodide, 396 F.3d 730, 734-35 (6th Cir. 2005). The non-moving party "may not rest upon [his] mere allegations," but must instead present "significant probative evidence" establishing that "there is a genuine issue for trial." Pack v. Damon Corp., 434 F.3d 810, 813-14 (6th Cir. 2006).

Moreover, the non-moving party cannot defeat a properly supported motion for summary judgment by "simply arguing that it relies solely or in part **[*4]** upon credibility determinations." Fogerty v. MGM Group Holdings Corp., Inc., 379 F.3d 348, 353 (6th Cir. 2004). Rather, the non-moving party "must be able to point to some facts which may or will entitle him to judgment, or refute the proof of the moving party in some material portion, and . . . may not merely recite the incantation, 'Credibility,' and have a trial on the hope that a jury may disbelieve factually uncontested proof." Id. at 353-54. In sum, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Daniels, 396 F.3d at 735.

ANALYSIS

Plaintiff alleges that Defendants Novak, Wood, and Christiansen all violated his right to be free from unlawful retaliation. To prevail on a retaliation claim, Plaintiff must satisfy three elements: (1) he was engaged in constitutionally protected conduct; (2) Defendant took adverse action against him which would deter a person of ordinary firmness from continuing to engage in protected conduct; and (3) the adverse action was motivated by Plaintiffs protected conduct. *See* Holzemer v. City of Memphis, 621 F.3d 512, 520 (6th Cir. 2010). Before addressing Plaintiffs specific claims against each Defendant, examination of the relevant factual background **[*5]** is first necessary.

Plaintiff testified that on April 8, 2016, he sent a kite to Defendant Novak. (ECF No. 101-2 at PageID.817). The kite Plaintiff sent to Novak read as follows:

> Your continual retaliation and harassment, which began in 2014 and has resumed upon my return to ICF, will only make it easier to prove my federal claims against [you] and cost the state more money to indemnify (sic) your damages. You also assume that I'll never get out of ICF segregation, but for the last year I was not at ICF or in segregation, eventually you'll lose your power to harass me in segregation again. I am entitled to 5 case laws 3 times per week in ad. Seg., and all these can be downloaded from Lexis, so you have no valid excuse.

(ECF No. 101-3 at PageID.821).

Novak interpreted Plaintiffs kite as "a threat involving a physical confrontation at some time in the future." (ECF No. 101-4 at PageID.823-24). Novak charged Plaintiff with a misconduct violation for threatening behavior because he "felt threatened." (*Id.* at PageID.824). Plaintiff was not convicted of this charge, however. This result was because Plaintiff had not been charged with the appropriate offense, not because his behavior was unworthy **[*6]** of sanction. As Defendant Christiansen explained, Plaintiff's kite "was not clearly threatening behavior." (ECF No. 101-8 at PageID.891). On the other hand, had Novak instead charged Plaintiff with insolence, Plaintiff would have been found guilty of the charge. (*Id.*).

On or about July 19, 2016, Plaintiff was notified that several library books he checked out were "overdue" and that "until those materials are returned to the library, the processing of your future request(s) may be

delayed." (ECF No. 29-3 at PageID.394). On July 21, 2016, Plaintiff sent another kite to Defendant Novak which read as follows:

> You still insist on your retaliatory lies in your false overdue notice of July 19, 2016. You are a liar and you never sent me any of those materials to me, and the fact that I requested that 860 F.2d 328 again on 7/10/2016 3 of 3 proves it. I number and turn in 3 request each week only to learn from your clerks that you give them only one a other they don't see. Several other litigaters (sic) will witness in court that you do the same to them and I can show a long pattern of it. Where's your proof you send materials? I have my witnesses, including staff. Of a meager 5 items per week, you often **[*7]** retaliate by missing pages in case laws — your clerks don't do the printing, and I have that evidence also. Even inside the law library, you scream and threaten prisoners trying to do there (sic) work, kicking them out. Yup, many of those witnesses I have too. You even wrote me a ticket for a kite so frivolous on its face the reviewing Sgt. threw it in the trash. That's evidence too. You've already been sued in State Court, and what about those mandatory items you discarded? More evidence.

(ECF No. 29-4 at PageID.473).

In response to Plaintiffs screed, Defendant Novak charged Plaintiff with a misconduct violation for insolence. (ECF No. 29-4 at PageID.474). Plaintiff was convicted of this charge. (*Id.* at PageID.475). On July 26, 2016, Plaintiff wrote a "memorandum" to Defendant Christiansen stating this "this is the final attempt to confront your involvement with the persistent retaliation of law librarian Joseph Novak." (ECF No. 29-4 at PageID.476). Plaintiff informed Christiansen that if he failed to overturn his misconduct conviction such would constitute evidence of retaliation by Christiansen. (*Id.* at PageID.476-77). Christiansen declined to overturn Plaintiffs misconduct conviction. **[*8]** (*Id.* at PageID.478).

A. Defendant Novak

As noted above, Defendant Novak charged Plaintiff with two misconduct violations. Plaintiff alleges that Novak's actions constituted unlawful retaliation. Defendant Novak argues that he is entitled to summary judgment because Plaintiff was not engaged in protected conduct. The Court agrees.

There is no question that the *First Amendment* affords prisoners the right to file grievances regarding the conditions of their confinement. This right, however, protects only the filing of non-frivolous grievances. *See, e.g., Maben v. Thelen, 887 F.3d 252, 264 (6th Cir. 2018)*. Thus, an inmate "cannot immunize himself from adverse administrative action by prison officials merely by filing a grievance or lawsuit and then claiming everything that happens to him is retaliatory." *Ibid.*

The two kites which Plaintiff submitted to Novak, and which form the basis of his retaliation claims, were frivolous and abusive. Neither kite represents a reasonable attempt to resolve a problem, but instead are nothing more than attempts by Plaintiff to intimidate and threaten Novak. Plaintiff enjoys no *First Amendment* right to threaten or intimidate prison staff. Thus, Plaintiffs kites do not qualify as protected conduct. *See, e.g., Maben, 887 F.3d at 264* ("abusive or manipulative **[*9]** use of a grievance system would not be protected conduct"); *Medlock v. Trierweiler, 2020 U.S. Dist. LEXIS 90080, 2020 WL 2576157 at *4 (W.D. Mich., Mar. 9, 2020)* (filing a grievance qualifies as protected conduct only if the grievance has merit); *Lockett v. Suardini, 526 F.3d 866, 874 (6th Cir. 2008)* (conduct which violates MDOC policy is not protected conduct).[1]

B. Defendant Wood

Defendant Wood found Plaintiff guilty of insolence for the kite he sent to Defendant Novak on July 21, 2016. Plaintiff alleges that Wood found him guilty of this charge for improper retaliatory reasons. Plaintiff has failed, however, to identify the protected conduct which he alleges prompted Wood to retaliate against him.

To the extent Plaintiff alleges that his kite to Novak constituted the requisite protected conduct, his claim fails. As discussed above, Plaintiffs kite was frivolous and abusive and, therefore, did not constitute protected conduct. To the extent Plaintiff argues that his decision to challenge the misconduct charge constituted protected conduct, his claim likewise fails. Defendant Wood asserts in an affidavit that he found Plaintiff guilty of the insolence charge because "the language contained in the kite [to Novak] fit the definition of insolence." (ECF No. 101-10 at PageID.899). Given this unrefuted evidence, Plaintiff cannot demonstrate

[1] Plaintiff testified that he considered the kites in question to be a necessary part of the grievance process. (ECF No. 101-2 at PageID.818). In this context, therefore, the Court discerns no distinction between a kite and a prison grievance.

that **[*10]** Wood's actions were in any way related to any protected conduct in which he may have engaged.

C. Defendant Christiansen

Plaintiff appealed his misconduct conviction to Defendant Christiansen who denied Plaintiffs appeal. Plaintiff alleges that Christiansen denied his appeal for improper retaliatory reasons. Plaintiff has failed, however, to identify the protected conduct which he alleges prompted Christiansen to retaliate against him.

To the extent Plaintiff alleges that his kite to Novak constituted the requisite protected conduct, his claim fails. As discussed above, Plaintiffs kite was frivolous and abusive and, therefore, did not constitute protected conduct. To the extent Plaintiff argues that his decision to appeal his misconduct conviction constituted protected conduct, his claim likewise fails. Defendant Christiansen asserts in an affidavit that he denied Plaintiffs appeal of the insolence conviction because the evidence supported this result. (ECF No. 101-8 at PageID.890). Given this unrefuted evidence, Plaintiff cannot demonstrate that Christiansen's actions were in any way related to any protected conduct in which he may have engaged.

CONCLUSION

For the reasons articulated herein, **[*11]** the undersigned recommends that Defendants' Motion for Summary Judgment (ECF No. 100) be granted; Plaintiffs Motion for Summary Judgment (ECF No. 103) be denied; and this matter terminated.

For the same reasons underlying these recommendations, the undersigned finds that an appeal of such would be frivolous. *Coppedge v. United States, 369 U.S. 438, 445, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962)*. Accordingly, the undersigned further recommends that an appeal of this matter by Plaintiff would not be in good faith.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen days of the date of service of this notice. *28 U.S.C. § 636(b)(1)(C)*. Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Ant, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985)*; *United States v. Walters, 638 F.2d 947 (6th Cir.1981)*.

Respectfully submitted,

Date: September 7, 2021

/s/ Phillip J. Green

PHILLIP J. GREEN

United States Magistrate Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT ANNABEL, II,

Plaintiff,

v.

JOSEPH NOVAK, et al.,

Defendants.
_____/

CASE No. 1:19-CV-199

HON. ROBERT J. JONKER

ORDER APPROVING AND ADOPTING REPORT AND RECOMMENDATION

This is a prisoner civil rights lawsuit. On September 7, 2021, Magistrate Judge Green filed a Report and Recommendation that recommended the Court grant Defendants' motion for summary judgment on all remaining claims and dismiss this case. (ECF No. 117). Objections were due within 14 days after service of the report. The Report and Recommendation was mailed to plaintiff twice at the address plaintiff provided in his change of address notification of July 21, 2021 (ECF No. 113).[1] Both times, the envelope was returned to the Court with the notation, "Return to Sender. Not Deliverable as Addressed. Unable to Forward." The Clerk of Court attempted to contact plaintiff at the phone number listed on his change of address notification, but it was reported to be an incorrect phone number. On September 28, 2021, with no objections having been filed, the Court entered an Order and Judgment approving and adopting the Report and Recommendation. (ECF Nos. 120, 121).

On November 22, 2021, the Clerk of Court docketed a Motion for Reconsideration filed by plaintiff. (ECF No. 125). In his brief accompanying the motion, plaintiff says the address was

[1] This is reportedly the address where plaintiff was living after being placed on parole. The record reflects that plaintiff is currently lodged at the Macomb Correctional Facility. (ECF No. 128).

correct, but for unknown reasons the Report and Recommendation was returned to the Court. (ECF No. 126, PageID.1107-1108). He asks the Court to vacate its Order adopting the report and recommendation and to consider his objections, which he attaches to his brief. (ECF No. 126-2).

PLAINTIFF'S MOTION FOR RECONSIDERATION

The Court construes the motion for reconsideration (ECF No. 125) as one seeking relief from judgment under Rule 60(b) and **GRANTS** the motion to the extent plaintiff seeks such relief. Under Rule 60(b)(1), the Court may relieve a party from a final judgment, order, or proceeding based on "mistake, accident, surprise, or excusable neglect." Plaintiff does not dispute that the address on the two mailings that were returned to the Court was the one he provided to the Court on July 21, 2021, and only states that the mail did not go through for some unknown reason. He faults the Court for failing to contact him at the phone number he provided the Court. But even assuming the Court had such an obligation, the record reflects that the Clerk of Court did, in fact, attempt to contact plaintiff at the phone number he provided. That number, however, was reported to be an incorrect number. (ECF No. 120, PageID.1095). The Court does not believe plaintiff has met his motion for reconsideration burden. It is incumbent upon plaintiff, like all litigants, to keep the Court apprised of his contact information; his failure to do so does not, now, require the Court to reopen this closed case.

That said, out of an abundance of caution, and in the interests of rendering a decision on the merits, the Court will nevertheless vacate its September 28, 2021, Order adopting the Report and Recommendation, and proceed to review Plaintiff's objections. Based on a de novo review of the record, the Court finds no merit in Plaintiff's objections, and so the Court affirms its previous order adopting the Magistrate Judge's recommended disposition.

PLAINTIFF'S OBJECTIONS FAIL ON A DE NOVO REVIEW

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 117) and Plaintiff's Objection to the Report and Recommendation (ECF No. 126-2). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

> [t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's Objections. After its review, the Court finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

Plaintiff's Objection contains nothing that undermines the validity of the Report and Recommendation, and he fails to deal in a meaningful way with the Magistrate Judge's analysis. Plaintiff primarily reiterates arguments and conclusory statements he made in his original petition. The Report and Recommendation already carefully, thoroughly, and accurately addresses plaintiff's arguments and claims. Plaintiff does not engage the Report and Recommendation's analysis in any persuasive way. Plaintiff claims for example, that the Magistrate Judge applied

the incorrect standard of review. He did not. Indeed, the Magistrate Judge expressly recited the correct standards in his report (ECF No. 117, PageID.1086). Plaintiff would ask the Magistrate to draw a different legal conclusion—that he was not insolent in his kites to Defendant Novak—but that is not what the summary standard requires. Nothing in Plaintiff's Objections changes the fundamental analysis. The Court agrees with the Magistrate Judge's conclusion that the defense motion for summary judgment should be granted, for the very reasons the Report and Recommendation details.

CONCLUSION

ACCORDINGLY, IT IS ORDERED:

1. The Court's September 28, 2021 Order (ECF No. 120) is **VACATED.**
2. Plaintiff's Motion for Reconsideration (ECF No. 125) is **GRANTED** to the extent specified in this Order.
3. The Report and Recommendation of the Magistrate Judge (ECF No. 117) is **APPROVED and ADOPTED** as the Opinion of the Court following a de novo review.
4. This action is terminated. An amended judgment shall enter.

Dated: September 6, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT ANNABEL, II,

Plaintiff,

v.

JOSEPH NOVAK, et al.,

Defendants.
_____/

CASE No. 1:19-CV-199

HON. ROBERT J. JONKER

AMENDED JUDGMENT

In accordance with the Order entered this day and the earlier orders of this Court, Judgment is entered in favor of Defendants and against Plaintiff Robert Annabel.

Dated: September 6, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ROBERT WAYNE ANNABEL
#414234, II ,

Plaintiff,

Case No. 1:19-cv-00199-RJJ

Honorable Robert J. Jonker

v.

JOSEPH NOVAK, et al.,

Defendants.
_____/

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. The Court dismissed Plaintiff's action on September 6, 2022. (ECF Nos. 129, 130). On September 26, 2022, Plaintiff filed a Notice of Appeal. (ECF No. 131).

This matter is now before the Court on Plaintiff's Motion for Leave to Proceed on Appeal *In Forma Pauperis*. (ECF No. 132). For the reasons discussed below, Plaintiff's motion will be denied.

This Court is required to certify under 28 U.S.C. § 1915(a)(3) whether an appeal would be taken in good faith. *McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal. The certification under § 1915(a)(3) does not affect Plaintiff's responsibility to pay the entire appellate filing fee pursuant to

SEND REMITTANCES TO:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."

APPENDIX C

No. 22-1867

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT ANNABEL, II,

Plaintiff-Appellant,

v.

JOSEPH NOVAK, LAW LIBRARIAN, ET AL.,

Defendants-Appellees.

ORDER

Before: COLE, McKEAGUE, and NALBANDIAN, Circuit Judges.

Robert Annabel, II, a pro se Michigan prisoner, petitions the court to rehear en banc its order denying him leave to proceed in forma pauperis on appeal. The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. Fed. R. App. P. 40(a).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX D

No. 22-1867

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 3, 2023
DEBORAH S. HUNT, Clerk

ROBERT ANNABEL, II,

Plaintiff-Appellant,

v.

JOSEPH NOVAK, LAW LIBRARIAN, ET AL.,

Defendants-Appellees.

ORDER

Before: COLE, McKEAGUE, and NALBANDIAN, Circuit Judges.

Robert Annabel, II, petitions for rehearing en banc of this court's order entered on May 2, 2023, denying leave to proceed in forma pauperis on appeal. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc. Unless Annabel pays the $505 filing fee to the district court within 30 days of the entry of this order, this appeal will be dismissed for want of prosecution.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk