

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

JAMES DORSEY,	)	
	)	
Plaintiff	)	
	)	
v.	)	Docket No. 04-152-P-C
	)	(CCApp.04-2301)
CITY OF PORTLAND, et al	)	
	)	
Defendants.	)	

**ORDER DENYING APPLICATION TO PROCEED  
IN FORMA PAUPERIS AND STATEMENTS  
OF REASONS THEREFOR**

Before the Court is Plaintiff's most recent Application to Proceed In Forma Pauperis (Docket Item No. 8) on the Order of Court issued by the United States Court of Appeals for the First Judicial Circuit requiring this Court to determine, pursuant to Fed. R. App. P. 24(a), whether Plaintiff is entitled to be granted in forma pauperis status to appeal his case herein.

Fed. R. App. P. 24 (a)(1) provides as follows:

**(a) Leave to Proceed In Forma Pauperis.**

(1) *Motion in the District Court.* Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

- (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;
- (B) claims an entitlement to redress; and
- (C) states the issues that the party intends to present on appeal;

The pertinent facts are that Plaintiff filed a Complaint herein (Docket Item No. 1) with an accompanying Motion to Proceed in forma pauperis (Docket Item No. 4). The matter was referred to the Magistrate Judge. She entered her Order Denying Application to Proceed In Forma Pauperis (Docket Item No. 5). She clearly and succinctly stated her good and sufficient reasons for the denial. That decision was never appealed to this Court for review. *See* 28 U.S.C. § 636(b)(1)(A). That denial became final.

Thereafter, the Magistrate Judge rendered her Recommended Decision (Docket Item No. 6) recommending dismissal of Plaintiff's Complaint for failure to pay the required filing fee and resultant failure to prosecute the action. Plaintiff filed an Objection (Docket Item No. 8) to the Recommended Decision, which was duly considered by the Court on de novo review. The Court entered its Order Adopting the Recommended Decision (Docket Item No. 10).

Plaintiff has now filed a Notice of Appeal (Docket Item No. 12) that reads in its entirety, as follows:

notice is hereby given that James Dorsey, plaintiff, City of Portland et al Defendants, in the above named case, hereby appeals to the United States Court of Appeals for the first Circuit from the final judgement of dismissal for "failure to prosecute", entered in this action on the day, of, Aug,20,2004

Plaintiff then filed a further Motion for Leave to Proceed In Forma Pauperis and later withdrew that Motion, filing in place thereof the present Motion for similar leave (Docket Item No. 8) which states in toto:

Petitioner enters into [the] court record this petition, in a motion seeking relief from adverse judgment –in the denial of the right to proceed in in forma pauperis. Petitioner seeks relief for any and all the following reasons:

1. Petitioner is homeless

2. Petitioner was homeless when the judge ruled that petitioner had to pay filing fees.

Therefore, petitioner hopes and prays that pursuant to the above facts – the court grant petitioner relief.

Plaintiff then filed a “Petition for Removal” (Docket Item No. 14) which was addressed by the Magistrate Judge in her Order of October 20, 2004 (Docket Item No. 15).<sup>1</sup> She directed that Plaintiff’s paper be docketed and found that it required no further action from this Court. She treated the paper as, “[A] supplement to the Notices of Appeal previously filed.” *Id.* at 2 (unnumbered).

I assume the most recent pending Application to Proceed In Forma Pauperis which is the subject of the Court of Appeals Order before me is the typewritten application substituted for the handwritten original in Docket Item No. 8. On that basis, I **DENY** the Application. The fore-quoted appellate rule requires that the applicant “attach an affidavit that ... (C) states the issues that the party intends to appeal.” Fed. R. App. P. 24(a)(1)(C). Here, neither the Plaintiff’s Notice of Appeal nor the pending Application to Proceed In Forma Pauperis say anything about the issues Plaintiff wishes to present on appeal. There is no separate affidavit of record stating those issues. The Application for that reason alone is insufficient under the Rule.

Additionally, the Court notes that the only aspect of this matter that can properly be the subject of an appeal at this point is the judgment entered on this Court’s acceptance of the Magistrate Judge’s Recommended Decision recommending dismissal for Plaintiff’s failure to prosecute the action. That is based upon a now final denial by the Magistrate Judge of the Plaintiff’s original Application to Proceed In Forma Pauperis.

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<sup>1</sup> In her Order the Magistrate Judge refers to the prior paper as a “Notice of Removal.” My examination of the docket leads me to conclude that she intended to refer thereby to Docket Item No. 14.

The result is that there can be no conceivable error in the entry of that judgment. Further pursuit of this matter is an inane exercise in futility, and it is unworthy of funding from the public fisc.

The Application to Proceed In Forma Pauperis is hereby **DENIED** for the foregoing reasons.

/s/Gene Carter  
Gene Carter  
Senior U.S. District Court Judge

Dated at Portland, Maine this 9th day of December, 2004.

**Plaintiff**

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**JAMES DORSEY**

represented by **JAMES DORSEY**  
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PRO SE

V.

**Defendant**

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**PORTLAND, CITY OF**

**PORTLAND POLICE  
DEPARTMENT**

**MIKE CHITWOOD,**  
*Individually and in his official  
capacity*

**KNIGHT, OFFICER,**  
*Individually and in his official*

