IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DARNELL NOLLEY,	:	
	:	
Plaintiff,	:	
	:	
VS.	:	
	:	**NO. 5:15-CV-00075-CAR-MSH**
CYNTHIA NELSON, *et al.*,	:	
	:	
Defendants.	:	

ORDER

Presently pending before the Court is the *pro se* motion for leave to appeal *in forma pauperis* of Waseem Daker ("Movant") (ECF No. 120), seeking to appeal the Court's May 10, 2017 order denying his motion to intervene (ECF No. 114). Movant has also filed a motion for reconsideration of the order denying intervention (ECF No. 117). For the following reasons, the Court **DENIES** both of Movant's motions.

I. Motion for Reconsideration

Movant first seeks reconsideration of the non-case-dispositive order of the Magistrate Judge denying his motion to intervene.[1] Pursuant to Federal Rule of Civil

[1]There appears to be a split of authority regarding whether a motion to intervene is "a dispositive motion which must ultimately be decided by an Article III judge in the absence of consent," *Newman v. Sun Capital, Inc.*, No. 2:09-cv-445, 2010 WL 326069, at *1 (M.D. Fla. Jan. 21, 2010), or "a non-case-dispositive motion, which permits a magistrate judge to enter an order (as opposed to a report and recommendation), which is then reviewable under the clearly erroneous or contrary-to-law standard," *Bake House SB, LLC v. City of Miami Beach*, No. 17-20217-CV, 2017 WL 2645760, at *2 (S.D. Fla. June 20, 2017). The Court adopts the latter view. *See Bake House*, 2017 WL 2645760 at *2 (noting that "[a]lthough there have been a few contrary published opinions, federal district courts

Procedure 72(a),

> When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. . . . The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Movant's "motion for reconsideration" was filed within fourteen days of the Magistrate Judge's order denying discovery, and the Court will therefore construe the motion as an objection to that order pursuant to Rule 72(a).

The Magistrate Judge found that Movant was not entitled to intervene as a matter of right because he had no actual legal interest in the property or transaction that is the subject of the litigation in the above-captioned action. ECF No. 114 at 2. The Magistrate Judge also concluded that permissive intervention was inappropriate because it was evident that Movant was attempting to intervene in this action in an effort to circumvent certain requirements of the Prison Litigation Reform Act ("PLRA"). *Id.* at 2-3. The Court has reviewed the Magistrate Judge's order and Movant's motion for reconsideration and nothing therein persuades the Court that the Magistrate Judge's rulings are clearly erroneous or contrary to law. The Court therefore **DENIES** Petitioner's motion for reconsideration (ECF No. 117).

II. Motion for Leave to Appeal *in forma pauperis*

Pursuant to 28 U.S.C. § 1915(a)(1), a court may authorize an appeal of a civil action

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across the country typically treat an intervention motion as a non-case-dispositive motion").

or proceeding without prepayment of fees or security therefor if the putative appellant has filed "an affidavit that includes a statement of all assets" and "state[s] the nature of the . . . appeal and [the] affiant's belief that the person is entitled to redress."[2] If the trial court certifies in writing that the appeal is not taken in good faith, however, such appeal may not be taken *in forma pauperis*. 28 U.S.C. § 1915(a)(3).[3] "Good faith" means that an issue

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[2]Federal Rule of Appellate Procedure 24 similarly requires a party seeking leave to appeal *in forma pauperis* to file a motion and affidavit that establishes the party's inability to pay fees and costs, the party's belief that he is entitled to redress, and a statement of the issues which the party intends to present on appeal. Fed. R. App. P. 24(a).

[3]The Court also notes that the "three strikes" provision of the PLRA also prohibits a prisoner from "appeal[ing] a judgment in a civil action or proceeding" *in forma pauperis*

> if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Movant has had more than three of his cases or appeals dismissed on the statutorily-enumerated grounds prior to filing his notice of appeal in this case: *Daker v. Mokwa*, Order Denying Leave to Proceed IFP, ECF No. 2 in Case No. 2:14-cv-00395-UA-MRW (C.D. Cal. Feb. 4, 2014) (denying leave to proceed *in forma pauperis* and dismissing case after conducting screening under 28 U.S.C. § 1915(e)(2)(B) and finding claims were frivolous and failed to state a claim upon which relief may be granted); *Daker v. Warren*, Order Dismissing Appeal, Case No. 13-11630 (11th Cir. Mar. 4, 2014) (three-judge panel dismissal of appeal on grounds that appeal was frivolous); Order Dismissing Appeal, *Daker v. Warden*, Case No. 15-13148 (11th Cir. May 26, 2016) (three-judge panel dismissing appeal as frivolous); Order Dismissing Appeal, *Daker v. Commissioner*, Case No. 15-11266 (11th Cir. Oct. 7, 2016) (three-judge panel dismissing appeal as frivolous); Order Dismissing Appeal, *Daker v. Ferrero*, Case No. 15-13176 (11th Cir. Nov. 3, 2016) (three-judge panel dismissing appeal as frivolous); Order Dismissing Appeal, *Daker v. Governor*, Case No. 15-13179 (11th Cir. Dec. 19, 2016) (three-judge panel dismissing appeal as frivolous). Movant has therefore accrued more than three "strikes" for purposes of § 1915(g), and he is thus precluded from proceeding *in forma pauperis* on appeal unless he is presently in imminent danger of serious physical injury. In light of the Court's finding that Movant's appeal is not taken in good faith,

exists on appeal that is not frivolous under an objective standard. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). "An issue is frivolous when it appears that 'the legal theories are indisputably meritless.'" *Ghee v. Retailers Nat'l Bank*, 271 F. App'x 858, 859 (11th Cir. 2008) (per curiam) (quoting *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993)).

In this case, Movant does not provide a statement of the specific issues he intends to present on appeal in his motion for leave to appeal *in forma pauperis*, *see* Fed. R. App. P. 24(a)(1)(C), and upon reviewing the record, the Court finds no issues of arguable merit for appeal. Thus, for the reasons contained in the Magistrate Judge's Order (ECF No. 114), the Court finds that Movant's appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3). Movant's motion for leave to appeal IFP (ECF No. 120) is accordingly **DENIED.** If the Movant wishes to proceed with his appeal, he must pay the entire $505.00 appellate filing fee. Any further requests to proceed IFP on appeal should be directed, on motion, to the United States Court of Appeals for the Eleventh Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

. **SO ORDERED** this 18th day of July, 2017.

S/ C. Ashley Royal
C. ASHLEY ROYAL, SENIOR JUDGE
UNITED STATES DISTRICT COURT

however, the Court finds it unnecessary to address whether Movant has demonstrated that he falls within § 1915(g)'s imminent danger exception.