

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

**ENTERED**  
**MAR 04 2004**  
U.S. BANKRUPTCY COURT  
MDNC - MEL

IN RE: )  
 )  
Georgia A. Green, ) Case No. 03-13363C-13G  
 )  
Debtor. )  
 )

ORDER

This case came before the court on February 17, 2004, for hearing upon an application for leave to proceed in forma pauperis which was filed by the Debtor on January 28, 2004. In the application, the Debtor apparently seeks to proceed in forma pauperis with respect to an appeal to the District Court from an order entered by the court on January 27, 2004, dismissing this Chapter 13 case.

There is some disagreement as to whether a bankruptcy court has authority under 28 U.S.C. § 1915 to authorize a debtor to proceed in forma pauperis in a bankruptcy case. Compare In re Perroton, 958 F.2d 889, 896 (9th Cir. 1992) (bankruptcy court cannot waive filing fees), with In re Fitzgerald, 192 B.R. 861, 862-63 (Bankr. E.D. Va. 1996) (collecting cases and concluding that bankruptcy court cannot waive filing fee for bankruptcy petition but can waive fees for other proceedings within a bankruptcy case). However, having considered the application and affidavit submitted by the Debtor, the court has concluded that even if there is authority for this court to waive fees pursuant to 28 U.S.C. § 1915, this is not a case in which the court should do so.

Section 1915 was intended to provide indigent parties with the opportunity for meaningful access to the federal courts. However, even if a party is indigent, 28 U.S.C. § 1915 does not provide an unfettered, unlimited right to relief. Thus, relief under 28 U.S.C. § 1915 may be denied "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." See In re Reed, 178 B.R. 817, 822 (Bankr. D. Ariz. 1995) (quoting from Neitzke v. Williams, 490 U.S. 319, 324, 109 S.Ct. 1827, 1831, 104 L.Ed.2d 338 (1989)). In the present case, the Debtor is not entitled to relief under 28 U.S.C. § 1915 because Debtor's appeal lacks an arguable basis in either law or fact and is frivolous as a matter of law.

The affidavit required under § 1915 must "state the nature of the action, defense or appeal and affiant's belief that the person is entitled to relief." The affidavit filed by the Debtor states that she wishes to appeal "because of due process for a Black Woman, and the Judge (Judge William Stocks) did not allow the important witness to called to prove previous prejury [sic] by the company lawyers, and the sanctions are willful."

How the above-described grounds for appeal are related to an appeal from the order dismissing this case based upon improper venue is unexplained and unclear. However, to the extent the foregoing language can be said to state an issue or matter for review in an appeal from such order, there is no rational argument

in law or fact which would entitle the Debtor to relief with respect to such issue. Debtor's appeal presents no legal points that are arguable on the merits and is therefore without merit and frivolous as a matter of law. Accordingly, Debtor's application for leave to proceed in forma pauperis will be denied. Moreover, given the frivolousness of the appeal, the court certifies pursuant to 28 U.S.C. § 1915(a)(3) that such appeal has not been taken in good faith. See Meadows v. Trotter, 855 F. Supp. 217, 219 (W.D. Tenn. 1994) ("An appeal is not taken in good faith if the issue presented is frivolous.").

Now, therefore, Debtor's application pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis with respect to an appeal from the order of dismissal is DENIED.

This 3 day of March, 2004.



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WILLIAM L. STOCKS  
United States Bankruptcy Judge