

2003 WL 23198835

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United States District Court,
W.D. Wisconsin.

Dennis E. JONES'EL, Micha'El Johnson,
De'Ondre Conquest, Luis Nieves, Scott Seal, Alex
Figueroa, Robert Sallie, Chad Goetsch, Edward
Piscitello, Quintin L'Minggio, Lorenzo Balli,
Donald Brown, Christopher Scarver, Benjamin
Biese, Lashawn Logan, Jason Pagliarini, and
Andrew Collette, and all others similarly situated,
Plaintiffs,

v.

Gerald BERGE and Jon Litscher, Defendants.

No. 00-C-421-C. | March 4, 2003.

Attorneys and Law Firms

Stephen P. Hurley and Edward R. Garvey, for Plaintiffs.

James E. McCambridge, Assistant Attorney General,
Madison, WI, for Defendants.

Opinion

ORDER

CRABB, J.

*1 In an order dated February 6, 2003, I denied class member Evelio Duarte-Vestar's motion for leave to proceed on appeal *in forma pauperis* from the settlement agreement in this case. The denial was based on Duarte-Vestar's failure to respond to this court's order dated December 31, 2002 and entered on the docket on January 6, 2003, asking him to submit a trust fund account statement to show his indigence and a copy of the objections he had filed in response to the proposed settlement agreement to show his good faith in taking the appeal. Now Duarte-Vestar has advised the court that he did not receive the court's earlier order and was not aware of it until he received the February 6, 2003 order denying him leave to proceed *in forma pauperis* on appeal. He has filed a document titled "Motion to Vacate Orders," which I construe as a motion for reconsideration of the February 6, 2003 order denying him leave to proceed *in forma pauperis* on appeal.

A review of the court's file reveals that Duarte-Vestar is correct that he was not sent a copy of the December 31 order. Through a clerical error, the order was sent to

counsel in the case but not to Duarte-Vestar. Nevertheless, the record shows that the court sent Duarte-Vestar a copy of this court's February 6 order. That order gave him clear notice of the documentation he needed to give the court to enable it to decide whether he was eligible to proceed *in forma pauperis* on appeal. The February 6 order reads in relevant part,

In an order entered on January 6, 2003, I advised Duarte-Vestar that before I could decide whether his appeal is taken in good faith, he would have to submit a copy of the objections to the settlement proposal that he sent to the court during the objection period in this case and a statement of the issues he wishes to raise on appeal, as required by Fed. R.App. P. 24(a)(1). Also, I explained to Duarte-Vestar that in order to decide whether he is financially eligible for pauper status, it would be necessary for him to send this court a certified trust fund account statement for the period beginning approximately July 1, 2002 and ending approximately January 1, 2003.

Despite the fact that he has known for nearly a month what he had to file with this court, Duarte-Vestar still has not filed the necessary trust fund account statement or a copy of the objections he made to the proposed settlement agreement and a statement of reasons for taking an appeal. Therefore, there is no basis on which to find that he qualifies for indigent status or that the February 6 order is erroneous.

In the February 6 order, I advised Duarte-Vestar that if he believed I erred in denying his request for leave to proceed *in forma pauperis* on appeal, he had 30 days in which to challenge the ruling in the court of appeals. From a review of the court of appeals' docket sheet, it appears that Duarte-Vestar did not mount such a challenge. His failure to do so ends the process unless he can persuade the court of appeals to allow him to file an untimely motion to proceed *in forma pauperis* under Fed. R.App. P. 24(a)(5).

*2 IT IS ORDERED that Evelio Duarte-Vestar's motion for reconsideration of the February 6, 2003, order denying him leave to proceed *in forma pauperis* on appeal is DENIED.

