

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

BRYAN ANTHONY REO,

Plaintiff,

v.

MARTIN LINDSTEDT,

Defendant.

Case No. 1:19-cv-02103-SO

Hon. Solomon Oliver, Jr.

REO LAW, LLC

Bryan Anthony Reo (#0097470)
P.O. Box 5100
Mentor, OH 44061
(T): (440) 313-5893
(E): reo@reolaw.org
Pro se Plaintiff

MARTIN LINDSTEDT

338 Rabbit Track Road
Granby, MO 64844
(T): (417) 472-6901
(E): pastorlindstedt@gmail.com
Pro se Defendant

**PLAINTIFF BRYAN ANTHONY REO'S
BRIEF IN OPPOSITION TO DEFENDANT'S
MOTION TO PROCEED IN FORMA PAUPERIS**

NOW COMES Bryan Anthony Reo ("Plaintiff"), *pro se*, and hereby propounds upon Martin Lindstedt ("Defendant") and this Honorable Court Plaintiff Bryan Anthony Reo's Brief in Opposition to Defendant's Motion to Proceed In Forma Pauperis. Because Defendant is not genuinely indigent [he owns multiple parcels of real estate in addition to his primary residence] and he conveyed nearly \$2,000,000.00 worth of real estate out of his name to his sister Susan April Bessman in October 2019 [in a fraudulent conveyance¹]- with an action arising from that

¹ Circuit Court for the Sixth Judicial Court, Stanley County South Dakota Case #58CIV20-00007.

conveyance pending in South Dakota.² Defendant has approximately 30-40 acres of land separate from his primary residence in Missouri. Defendant has multiple firearms. Defendant has multiple vehicles. Defendant has a 1/3rd interest in what he [in court documents in South Dakota] described as a “16 acre farm in Missouri.” By no reasonable definition is Defendant indigent. [See attached Exhibit 2, Defendant’s Last Will and Testament, wherein he provides a schedule of assets of real property still in his name].

However, assuming arguendo that Defendant were determined to be indigent, he is no stranger to having his proposed pleadings or appeals reviewed per 28 U.S.C. § 1915(e)(2)(B)³ Assuming for the sake of argument that Plaintiffs qualify by economic status, the Court must review the proposed complaint to ensure it is not frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant immune from relief. 28 U.S.C. § 1915(e)(2)(B). Defendant’s claims for relief are frivolous, his arguments raised on his motion for reconsideration simply rehashed previously rejected arguments from his various briefs, and by failing to meaningfully brief any meritorious issues during the summary judgment state and motion for reconsideration stage of the instant action, Defendant has waived those issues for appeal by failing to preserve them. Finally, in regards to the frivolous nature of his appeal, Defendant failed to timely file a notice of appeal, his time to appeal by right has long since lapsed.

² A preliminary injunction freezing the South Dakota land and prohibiting any further transfers has been in effect since November 2, 2020, with initial temporary restraining orders in effect since February 26, 2020 to November 2, 2020 with the repeated extension of the TRO due to Covid preventing hearings on the preliminary injunction.

³ Pastor Martin Lindstedt et al., v City of Granby, Missouri, et al., Case 3:21-cv-05029-WBG (WD Mo. June 30, 2021- order denying In Forma Pauperis and dismissing complaint as frivolous) [attached as Exhibit 1]

On April 23, 2021, this Court issued an opinion and order granting partial reconsideration for plaintiff and granting summary judgment in favor of Plaintiff in the amount of \$1,000,000.00 dollars (EFC No. 72)

On May 21, 2021 Defendant filed a Motion for Reconsideration (ECF No. 76).

In the Sixth Circuit, a motion for reconsideration is construed as a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e). See *Moody v. Pepsi-Cola Metro. Bottling Co.*, 915 F.2d 201, 206 (6th Cir. 1990).

On June 14, 2021 this Court entered an order denying Defendant's Motion for Reconsideration and denying all other outstanding post-judgment motions, effectively terminating the case (ECF No. 79).

On 4/23/2021 a final appealable order was issued and judgment entered on behalf of Plaintiff against Defendant. Thus began the counting of the 30 days within which Defendant could timely file a notice of appeal. 28 days later Defendant [timely] filed a [deficient, meritless, abusive, and frivolous] motion for reconsideration, which while deficient and abusive arguably had the effect of tolling his time to appeal by freezing the appellate clock with 2 days left on the clock.

Fed. R. App. P. 4(a)(4)(A) provides that a motion filed per Fed. Civ. R. P. (59) filed within the time allowed by the rules, stops the counting of time to file a notice of appeal until the entry of

an order disposing of said motion. Fed. R. App. P. 4(a)(4)(A)(iv) and Fed. R. App. P. 4(a)(4)(A)(vi). Defendant was subject to a judgment entered on 4/23/2021. Defendant sought relief under Fed. Civ. R. P. 59 and Fed. Civ. R. P. 60 on 5/21/2021, and an order was entered on 6/14/2021 which disposed of his combined motion.

Fed. R. App. P. 4(a)(4) [along with the relevant advisory committee notes] makes it clear that when a motion is made per Civil Rule 59 or Civil Rule 60, the time to appeal is tolled until an order is entered disposing of such post-judgment motions.

In this instance Mr. Lindstedt filed a motion seeking relief under Fed. Civ. R. P. 59 and Fed. Civ. R. P. 60 on 5/21/2021, with said relief being denied in an order which disposed of those motions on 6/14/2021. Mr. Lindstedt had 2 days remaining on the clock within which to file a timely notice of appeal, that time has been squandered and he cannot now take an appeal [by right] of the matter. Mr. Lindstedt has also failed to articulate how, or by what means, he could appeal by permission pursuant to Fed. R. App. P. 5(a)(2) as said provision requires that the petition for leave to appeal by permission must be submitted within the time provided by Fed. R. App. P. 4(a) in order to be timely and accepted by the circuit clerk. Mr. Lindstedt's time to appeal by right ran out as of 11:59 pm EST on 6/16/2021. Mr. Lindstedt is now seeking to appeal 28 days after the date of the entry of the order disposing of his post-judgment motion which was itself filed 28 days after the date of the entry of the judgment, which means that as of 6/14/2021 Mr. Lindstedt only had 2 days left on the clock within which to appeal. His time has long since lapsed.

Any appeal undertaken by Defendant will be frivolous given that Defendant's time to appeal by right has lapsed, Defendant has not properly preserved any issue for appellate review, and Defendant has not demonstrated he is actually indigent. No appeal could be taken in good faith and the Court should not only deny Defendant's [defective and woefully inadequate] application for leave to proceed in forma pauperis and the Court should certify that per Fed. R. App. P. 24(a)(4)(b) that an appeal could not be taken in good faith.

Respectfully submitted,

REO LAW, LLC

/s/ Bryan Anthony Reo
Bryan Anthony Reo (#0097470)
P.O. Box 5100
Mentor, OH 44061
(T): (440) 313-5893
(E): reo@reolaw.org
Pro se Plaintiff

Dated: July 12, 2021

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MARTIN LINDSTEDT

338 Rabbit Track Road

Granby, MO 64844

(T): (417) 472-6901

(E): pastorlindstedt@gmail.com

Pro se Defendant

CERTIFICATE OF SERVICE

I, Bryan Anthony Reo, affirm that I am a party to the above-captioned civil action, and on July 12, 2021, I served a true and accurate copy of Plaintiff Bryan Anthony Reo's Brief in Opposition to Defendant's Motion To Proceed In Forma Pauperis and this Certificate of Service upon Martin Lindstedt, 338 Rabbit Track Road, Granby, MO 64844, by placing the same in a First Class postage-prepaid, properly addressed, and sealed envelope and in the United States Mail located in City of Mentor, Lake County, State of Ohio.

/s/ Bryan Anthony Reo

Bryan Anthony Reo (#0097470)

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Pro se Plaintiff

Dated: July 12, 2021

