

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

IN RE KEVIN PATRICK BRADY,
Petitioner.

Miscellaneous Docket No. 140

On Petition for Writ of Mandamus to the United States Court of Federal Claims in case no. 12-CV-0373, Judge Lawrence J. Block.

ON MOTION

PER CURIAM.

ORDER

Kevin Patrick Brady, pro se, petitions for a writ of mandamus. We consider whether Brady's petition should be construed as a notice of appeal. He also moves for leave to proceed in forma pauperis.

Brady filed a complaint in the United States Court of Federal Claims seeking a tax refund and other relief. The court dismissed his suit for lack of subject matter jurisdiction. Brady filed a motion for reconsideration that was denied by the Court of Federal Claims. We received this

IN RE KEVIN BRADY

2

petition within the time to appeal from the Court of Federal Claims' decision.

In order to appeal a judgment of the United States Court of Federal Claims, the party seeking appeal must file notice that sets forth (1) the name of each party to the proceeding, (2) the judgment, order, or part, thereof being appealed, and (3) the name of the court to which the appeal is taken. Fed. R. App. P. 3(c). Brady's petition clearly meets these requirements. In addition, his petition is timely if treated as a notice of appeal. *See* Fed. R. App. P. 4(a)(1)(B).

Because we conclude that the petition should be construed as a timely notice of appeal, mandamus relief is not appropriate. *See Mallard v. U.S. Dist. Court for the Southern Dist. of Iowa*, 490 U.S. 296, 309 (1989) (holding that a party seeking a writ bears the burden of proving that it has no other means of attaining the relief, such as by appeal); *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383 (1953) (stating "whatever may be done without the writ may not be done with it.").

Accordingly,

IT IS ORDERED THAT:

(1) The petition for a writ of mandamus is denied because the matter is treated as a notice of appeal. The clerk is directed to docket the case as an appeal.

(2) The motion for leave to proceed in forma pauperis is granted and thus requirement of payment of the fee in the appeal is waived.

3

IN RE KEVIN BRADY

FOR THE COURT

/s/ Jan Horbaly
Jan Horbaly
Clerk

s26