

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 23-6445**

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ANTHONY FRED MARTIN,

Plaintiff - Appellant,

v.

SUSAN DUFFY,

Defendant - Appellee.

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Appeal from the United States District Court for the District of South Carolina, at Florence.  
David C. Norton, District Judge. (4:15-cv-04947-DCN)

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Submitted: September 6, 2023

Decided: October 11, 2023

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Before GREGORY, WYNN, and HARRIS, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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Anthony Fred Martin, Appellant Pro Se. Andrew Lindemann, LINDEMANN LAW  
FIRM, P.A., Columbia, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Anthony Fred Martin, a South Carolina prisoner, filed a civil action against Defendant Susan Duffy pursuant to 42 U.S.C. § 1983. A jury ultimately found in Duffy's favor, and the district court entered judgment in accordance with the jury's verdict. On March 22, 2023, the district court denied Martin's Fed. R. Civ. P. 59(e) motion to alter or amend the judgment. Martin now seeks to appeal the district court's order denying his Rule 59(e) motion. Duffy has moved to dismiss the appeal as untimely, which Martin opposes.

The district court entered its order on March 22, 2023. In civil cases, parties have 30 days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007); see *Parrish v. United States*, 74 F.4th 160, 162 (4th Cir. 2023). Because Martin is incarcerated, the notice of appeal is considered filed as of the date it was properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c)(1); *Houston v. Lack*, 487 U.S. 266, 267 (1988).

The record does not conclusively establish whether Martin provided his notice of appeal to prison officials for mailing on or before April 21, 2023. Accordingly, we defer ruling on Duffy's motion to dismiss at this juncture, and we remand the case for the limited purpose of allowing the district court to make this finding and to determine whether Martin

timely noted an appeal under Rule 4(c)(1) and *Houston*. The record, as supplemented, will then be returned to this court for further consideration.

*REMANDED*