

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 14-10682

United States Court of Appeals
Fifth Circuit

FILED

May 19, 2015

Lyle W. Cayce
Clerk

AARON MARTIN, ET AL.,

Plaintiffs

v.

GEORGE ZOLEY, CEO, GEO Group Incorporated, ET AL.,

Defendants

LEROY LIVINGSTON, JR.,

Plaintiff-Appellant

v.

LIEUTENANT FREDERIC TUNAITIS, Sanders Estes Unit; DANIEL SIMPSON, Sanders Estes Unit; MARLENA S FRIDDLE, C.O., Sanders Estes Unit; KERRI S HOCKINGS, LVN, Medical Department Sanders Estes Unit,

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:08-CV-490
USDC No. 3:08-CV-1185

No. 14-10682

Before HIGGINBOTHAM, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Leroy Livingston, Jr., Texas prisoner # 01888406, moves for leave to proceed in forma pauperis (IFP) on appeal from the district court's dismissal of his claims in a consolidated 42 U.S.C. § 1983 civil rights suit, which the district court ultimately denied after granting the defendants' motion for summary judgment. This court has a duty to examine the basis of its jurisdiction, sua sponte, if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). A timely notice of appeal is a jurisdictional requirement in a civil case. *Bowles v. Russell*, 551 U.S. 205, 213-14 (2007).

Federal Rule of Appellate Procedure 4(a)(1)(A) requires that the notice of appeal in a civil action be filed within 30 days of entry of the judgment or order from which the appeal is taken. Moreover, "a judgment entered pursuant to Rule 54(b) [of the Federal Rules of Civil Procedure] is a final judgment, and an appeal must be taken within thirty days after its entry." *Smith v. Mine Safety Appliances Co.*, 691 F.2d 724, 725 (5th Cir. 1982). Livingston's notice of appeal was untimely because it was filed over five years after the district court dismissed his claims and almost two years after the district court granted summary judgment to the defendants. See FED. R. APP. P. 4(a)(1)(A). Additionally, neither Rule 4(a)(5) nor Rule 4(a)(6) assists Livingston with respect to the untimeliness of his notice of appeal. Given the absence of a timely notice of appeal in this case, this appeal must be dismissed for lack of jurisdiction.

APPEAL DISMISSED; MOTION DENIED.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.