

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 15, 2022

Lyle W. Cayce
Clerk

No. 22-20387
Summary Calendar

ADEKUNLE C. OMOYOSI, DOCTOR OF PHARMACY,

Plaintiff—Appellant,

versus

MICHAEL E. DEBAKEY VETERANS AFFAIRS MEDICAL CENTER;
DEPARTMENT OF VETERANS AFFAIRS,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-427

Before STEWART, DUNCAN, and WILSON, *Circuit Judges*.

PER CURIAM:*

Adenkule C. Omoyosi (“Omoyosi”) appeals the summary judgment dismissing his discrimination and retaliation claims. We dismiss the appeal as untimely.

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

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Omoyosi applied for clinical pharmacist positions at the Michael E. DeBakey Veterans Affairs Medical Center. He was ineligible for the positions, however, because he lacked an unrestricted pharmacy license. Omoyosi nevertheless claims that he was discriminated against in the hiring process based on race, color, gender, and national origin, and that he was retaliated against for filing an administrative grievance. After unsuccessfully pursuing administrative remedies, Omoyosi filed a federal lawsuit against the medical center and the Department of Veterans Affairs (collectively, “Defendants”), on February 8, 2021. On March 10, 2022, the district court granted summary judgment dismissing Omoyosi’s lawsuit for failure to make *prima facie* claims of discrimination and retaliation under Title VII. After unsuccessfully seeking reconsideration, Omoyosi filed a notice of appeal on July 27, 2022.

Defendants argue Omoyosi’s appeal must be dismissed as untimely. We agree. Because a United States agency is a party, Omoyosi had 60 days after final judgment to file a notice of appeal. FED. R. APP. P. 4(a)(1)(B). The 60-day clock began running on March 10, 2022, the date of the final judgment, and expired on May 9, 2022. Omoyosi, however, did not notice an appeal until July 27, 2022. It was therefore untimely.¹

To establish the timeliness of his appeal, Omoyosi states only that he did not timely receive notice of the final judgment from the clerk because his address changed on March 11, 2022—the day after final judgment was entered. This argument is meritless. “Lack of notice of the entry [of final judgment] does not affect the time for appeal or relieve—or authorize the

¹ After final judgment, Omoyosi did move for reconsideration. But such a motion tolls the appeals clock only if filed within 28 days of the final judgment. FED. R. APP. P. 4(a)(4)(A)(vi). Omoyosi’s motion was not filed until July 14, 2022, more than 28 days after the March 10, 2022 final judgment.

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court to relieve—a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure 4(a).” FED. R. CIV. P. 77(d); *see also Wilson v. Atwood Group*, 725 F.2d 255, 257 (5th Cir. 1984) (en banc). Omoyosi offers no argument why Federal Rule of Appellate Procedure 4(a) excused the untimeliness of his appeal.

APPEAL DISMISSED.