United States Court of Appeals for the Federal Circuit

2007-5112

JAMAR JAMES EVANS,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

ON MOTION

Before SCHALL, GAJARSA, and LINN <u>Circuit Judges</u>.

PER CURIAM.

O R D E R

The United States moves to dismiss Jamar James Evans' appeal as untimely. Evans submits correspondence that we treat as a motion to reopen the time to file an appeal pursuant to Fed. R. App. P. 4(a)(6). We consider whether a remand to the United States Court of Federal Claims is appropriate.

The trial court entered judgment dismissing Evans' complaint on January 5, 2007. Evans filed his notice of appeal on April 27, 2007, beyond the 60-day time period provided for by Fed. R. App. P. 4(a)(1)(B). Thus, Evans' appeal is untimely. However, Evans states that he did not receive notice of the January 5 trial court opinion until April 19, 2007.

Pursuant to Fed. R. App. P. 4(a)(6), the trial court may reopen the time to appeal in certain circumstances if it finds that a party did not receive notice of entry of judgment. Evans appears to seek relief pursuant to Rule 4(a)(6). However, such relief

may only be granted by a trial court. Thus, we determine that the better course is to remand to the Court of Federal Claims for the limited purpose of determining whether the time to appeal should be reopened pursuant to Rule 4(a)(6).

Accordingly,

IT IS ORDERED THAT:

(1)   The motion to dismiss is held in abeyance.

(2)   The case is remanded to the Court of Federal Claims for the limited purpose of determining whether the time to appeal should be reopened pursuant to Fed. R. App. P. 4(a)(6).

(3)   The briefing schedule is stayed.

(4)   The United States is directed to notify the court within 14 days of a ruling by the Court of Federal Claims concerning Evans' Rule 4(a)(6) motion. Evans may also respond within that time.

FOR THE COURT

___June 6, 2007___   /s/ Jan Horbaly_____
        Date   Jan Horbaly
                                           Clerk

cc: Jamar James Evans
       Joan Stentiford, Esq.

s17