

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 17, 2023

Christopher M. Wolpert
Clerk of Court

TODD GRAGG,

Plaintiff - Appellant,

v.

VERITAS H.H.S.; MAXIMUS K.C.; KRIS
KOBACH, Attorney General, State of
Kansas; WYANDOTTE COUNTY,
KANSAS, DISTRICT COURT; JAMES P.
BLOMBERG, Hearing Officer, Div. 18,
Wyandotte County, Kansas, District Court;
DANIEL SOPTIC, Sheriff, Wyandotte
County, Kansas; WILLIAM MAHONEY,
District Judge, Wyandotte County, Kansas,
District Court; LAURA KELLY,
Governor, State of Kansas,

Defendants - Appellees.

No. 23-3040
(D.C. No. 2:22-CV-02292-JWB-TJJ)
(D. Kan.)

ORDER*

Before **HARTZ**, **BALDOCK**, and **ROSSMAN**, Circuit Judges.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Plaintiff Todd Gragg, proceeding pro se, appeals from the district court's dismissal of his complaint. We dismiss the appeal for lack of appellate jurisdiction because the notice of appeal was untimely.

On July 26, 2022, Mr. Gragg filed a complaint in the United States District Court for the District of Kansas challenging a state-court judgment ordering the collection of \$51,785.57 in past-due child-support payments and the continued collection of monthly payments. The complaint alleges that Defendants conspired to deprive Mr. Gragg of his property without due process. On November 29, the district court dismissed the case for lack of subject-matter jurisdiction and, in the alternative, for failure to state a claim. Judgment was entered the same day. On March 7, 2023, Mr. Gragg filed a notice of appeal seeking to appeal from the November 29 judgment.

In a civil case, “[t]his court can exercise jurisdiction only if a notice of appeal is timely filed.” *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1239 (10th Cir. 2006). A notice of appeal in a civil case not involving the United States “must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1). Although Mr. Gragg is proceeding pro se, he must comply with the same procedural requirements that govern all litigants. *See Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007). In this case the district court's judgment was entered on November 29, 2022; but the notice of appeal was not filed until March 7, 2023, well after the 30-day deadline.

We recognize that the time to file an appeal can be extended by a timely motion filed under one of the Rules listed in Fed. R. App. P. 4(a)(4). But Mr. Gragg is not

entitled to any such extension. On January 19, 2023, Mr. Gragg filed a pleading captioned “Plaintiff’s motion for a findings of fact and conclusions of law – Federal Rules OF Appellant Procedure r 50(a) for judgment as a matter of law as to punitive damages [sic].” Although Mr. Gragg appears to invoke Fed. R. Civ. P. 50(a) and a request for postjudgment findings is permitted under Fed. R. Civ. P. 52(b), the district court reasonably construed the pleading as seeking relief from judgment under Fed. R. Civ. P. 60(b). In any event, the motions that can extend the time for appeal must be filed within 28 days of entry of judgment. *See* Fed. R. App. P. 4(a)(4)(A). Because Mr. Gragg’s pleading was filed more than three weeks after that deadline, it did not extend his time for appeal.

Although Mr. Gragg’s notice of appeal may have been timely with respect to the district court’s order denying his postjudgment pleading, which was filed on February 14, 2023, Mr. Gragg did not appeal from that order. His notice of appeal states that he is appealing from “the final judgment entered on November 29th, 2022,” and his brief in this court addresses only that judgment. *See* Aplt. Br. at 1 (“This appeal . . . arises from a decision of the district which was decided on November 29, 2022”). Mr. Gragg’s briefs do not mention the February 14 ruling, much less challenge any of the grounds for the ruling.

This appeal is **DISMISSED** for lack of jurisdiction.

Entered for the Court

Harris L Hartz
Circuit Judge