

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-6115

PAUL GRAHAM,

Plaintiff - Appellant,

versus

STATE OF MARYLAND DEPARTMENT OF CORRECTIONS,

Defendant - Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, District Judge. (1:06-cv-01998-CCB)

Submitted: January 28, 2008

Decided: February 22, 2008

Before NIEMEYER, KING, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Paul Graham, Appellant Pro Se. Karl Aram Pothier, Assistant Attorney General, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Paul Graham seeks to appeal the district court's order dismissing his 42 U.S.C. § 1983 (2000) suit. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties in a civil action are accorded thirty 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). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978).

The district court's order was entered on the docket on November 30, 2006. Graham's notice of appeal was dated January 6 and filed January 22, 2007. Because Graham's notice of appeal could be interpreted to allege that he had not received the district court's judgment, we previously remanded to the district court for a determination of whether Graham was entitled to the benefit of Rule 4(a)(6) to reopen the time to file an appeal. The district court found that Graham timely received the judgment, and the case has now been returned to this court.

We review the district court's denial of a Rule 4(a)(6) motion for abuse of discretion. Ogden v. San Juan County, 32 F.3d 452, 455 (10th Cir. 1994). The district court concluded that it

timely sent out the judgment, that Graham had received legal mail during the relevant time period, and that the judgment was never returned to the court. We find that the district court's conclusions were not an abuse of discretion. See James v. Jacobson, 6 F.3d 233, 239 (4th Cir. 1993) (stating that abuse of discretion may occur by failure to exercise discretion, failure to take into account judicially recognized factors constraining exercise of discretion, or erroneous factual or legal premises).

Accordingly, we dismiss the appeal as untimely. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED