

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-6080

ALLAN A. PETERSEN,

Plaintiff - Appellant,

v.

BRIAN PRICE; MICHELLE SPEARS; DOMINIC GUTIERREZ; SUSAN MCCLINTOCK; MAVIS HOLYFIELD,

Defendants - Appellees.

Appeal from the United States District Court for the Northern District of West Virginia, at Wheeling. Frederick P. Stamp, Jr., Senior District Judge. (5:06-cv-00106-FPS-JSK)

Submitted: December 17, 2009

Decided: January 7, 2010

Before TRAXLER, Chief Judge, DUNCAN, Circuit Judge, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Allan A. Petersen, Appellant Pro Se. Betsy C. Jividen, Acting United States Attorney, Wheeling, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Allan A. Petersen appeals the district court's order dismissing with prejudice his civil rights complaint. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

When the United States or its officer or agency is a party, the notice of appeal must be filed no more than sixty days after the entry of the district court's final judgment or order, Fed. R. App. P. 4(a)(1)(B), 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). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007); see United States v. Urutyan, 564 F.3d 679, 685 (4th Cir. 2009) (discussing Bowles and the appeal periods under Fed. R. App. P. 4(a)).

The district court's order dismissing Petersen's complaint was entered on September 28, 2007, and the sixty-day appeal period expired on November 27, 2007. We have twice remanded this case to the district court to determine whether Petersen timely filed his notice of appeal or could establish good cause or excusable neglect to extend the appeal period. See Peterson v. Price, 324 F. App'x 230, 231 (4th Cir. 2009)

(No. 08-6080); Peterson v. Price, 272 F. App'x 309 (4th Cir. 2008) (No. 08-6080).

In its most recent order, the district court concluded the notice of appeal was untimely because it was filed, at the earliest, on December 3, 2007. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988). In reaching this conclusion, the district court relied on evidence submitted by Defendants to refute the earlier filing date Petersen asserted. Petersen did not dispute this evidence in the district court and offers no contrary position on appeal. The district court further concluded Petersen had not established the good cause or excusable neglect required to extend the appeal period.

We agree with the district court's determination regarding the timeliness of the notice of appeal. Because Petersen failed to file a timely notice of appeal or to obtain an extension of the appeal period, we dismiss the appeal. 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