

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 23-1420**

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SCOTTSDALE INSURANCE COMPANY,

Plaintiff - Appellee,

v.

SOLWIND ENERGY, LLC; GEOEX, INC.,

Defendants - Appellants.

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Appeal from the United States District Court for the Southern District of West Virginia, at  
Charleston. Joseph R. Goodwin, District Judge. (2:22-cv-00036)

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Submitted: March 13, 2024

Decided: April 9, 2024

Amended: April 9, 2024

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Before WILKINSON and THACKER, Circuit Judges, and FLOYD, Senior Circuit Judge.

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**ON BRIEF:** Brent K. Kesner, Ernest G. Hentschel, II, KESNER & KESNER, PLLC, Charleston, West Virginia, for Appellant Solwind Energy, LLC. Eldred E. Adams, Jr., Louisa, Kentucky, for Appellant Geoex, Inc. George C. Rockas, Boston, Massachusetts, Michael Secret, WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, McLean, Virginia, for Appellee.

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ORDER

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PER CURIAM:

Appellant Solwind Energy, LLC (“Solwind”) appeals the district court’s issuance of summary judgment in favor of Appellee Scottsdale Insurance Company (“Scottsdale”). The district court entered summary judgment in Scottsdale’s favor against Solwind and Geoex, Inc. (“Geoex”), a defendant below, on March 14, 2023. Solwind timely filed a notice of appeal on April 12, 2023. Geoex did not appeal.

On March 11, 2024, Solwind moved this court to dismiss its appeal pursuant to Federal Rule of Appellate Procedure 42. Scottsdale consented to Solwind’s motion. Geoex also consented to Solwind’s motion but stated that it wished to proceed individually. Geoex argues that it maintains a stake in the insurance coverage issues between Solwind and Scottsdale because Geoex is suing Solwind in an underlying action. In response to Geoex’s position, Scottsdale has filed two motions stating that, if the court proceeds, Scottsdale requests oral argument notwithstanding its consent to Solwind’s motion to dismiss the appeal.

We grant Solwind’s motion to dismiss this appeal. Pursuant to Federal Rule of Appellate Procedure 42, “an appeal may be dismissed on the appellant’s motion on terms agreed to by the parties or fixed by the court.” Fed. R. App. P. 42(b)(2). Scottsdale and Geoex consent to Solwind’s motion to dismiss its appeal. But, critically, Solwind is the only Appellant properly before this court. Geoex is not properly before the court. It did not file a notice of appeal or anything that could be construed as such, within the window for appellate jurisdiction.

“[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). “An appeal permitted by law as of right . . . shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4.” Fed. R. App. P. 3(a). In a civil case, parties have 30 days to file a notice of appeal. Fed. R. App. P. 4(a)(1)(A). “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed.” *Id.* at 4(a)(3).

“Courts will liberally construe the requirements of Rule 3.” *Smith v. Barry*, 502 U.S. 244, 248 (1992). “This principle of liberal construction does not, however, excuse noncompliance with the Rule.” *Id.* The dictates of Rule 3 “are jurisdictional in nature, and their satisfaction is a prerequisite to appellate review.” *Id.*

Geoex filed nothing that could be construed as a notice of appeal within either the 30 day period provided by Rule 4(a)(1) or the 14 day co-party tacking period provided by Rule 4(a)(3). The district court’s order and judgment were entered on March 14, 2023. Solwind filed a notice of appeal on April 12, 2023, within the 30 day window of Rule 4(a), but its notice did not mention Geoex.

The first action Geoex took in this appeal was its counsel’s notice of appearance, ECF No. 12, which was filed on May 9, 2023 -- 56 days after entry of judgment and 27 days after Solwind filed its notice of appeal. On the appearance of counsel form, Geoex’s counsel marked a box designating Geoex as an “appellee.” *Id.* The same day, Geoex filed a disclosure statement also referring to itself as “Appellee.” ECF No. 13 at 1. On May 17,

2023, Geoex filed a “Motion for Clarification” informing the court that its interests were aligned with Solwind’s for purposes of this appeal. ECF No. 15.

But even if one of those filings could be loosely construed as a notice of appeal, nothing that Geoex filed was within the window for appellate jurisdiction, and Geoex never requested the district court to reopen the jurisdictional window. Therefore, Geoex is not properly before this court. *See Smith*, 502 U.S. at 248 (noting that the “principle of liberal construction does not . . . excuse noncompliance with . . . Rule 3’s dictates[, which] are jurisdictional in nature, and their satisfaction is a prerequisite to appellate review”).

Accordingly, the court dismisses this appeal upon such terms as have been agreed to by Solwind and Scottsdale -- the parties properly before the court -- pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure. The court denies Scottsdale’s motions for oral argument as moot.

FOR THE COURT

/s/ Nwamaka Anowi  
Clerk