

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00196-LTB

CRAIG S. ROBLEDO-VALDEZ,

Plaintiff,

v.

JEWEL WEST,
DALE BURKE,
CHRIS BARR,
DANIEL DENT,
ANDREA NICHOLS,
JOSEPH KELEMAN,
REANNE WILL,
RHONDA HADRICK,
LESLIE PAYNE,
CARMEN ESTRADA,
CAROL SOARES,
SEAN FOSTER,
MR. RODECAPE,
DENNIS BURBANK,
KEITH NORDELL,
ANTHONY DeCESARO,
2 UNKNOWN D.O.C. TIME OPS. OFFICERS,
MARK FAIRBAIRN,
REGINA ROBERTS,
ANGELA TIDEMANN,
MR. MEISNER,
MS. JIMENEZ,
TRAVIS TRANI,
BRANDON WITZ,
SUSAN JONES,
MR. SPURLOCK,
PATSY HARTLEY,
TRACY SWINDLER,
MARSHALL GRIFFITH,
PAUL LARSON,
MR. SMITH,
MRS. DeFUSCO,
UNNAMED PAROLE BOARD MEMBER,
CHAIRMAN OF PAROLE BOARD,
LINDA MAIFELD,
LARRY WATSON,
TINA VALDEZ,
HEAD OF OFFENDER SERVICES,
DANIEL LAKE,
DANIEL BARBERO,
MS. MORRIS, and
JAMES SINNOTT,

Defendants.

ORDER

This matter is before the Court on the “Request for Leave to File Late Notice of Appeal” (ECF No. 18) filed *pro se* by Plaintiff on July 1, 2013. Plaintiff seeks an extension of time to file a notice of appeal from the Court’s Order of Dismissal (ECF No. 5) and the Judgment (ECF No. 6) entered in this action on March 6, 2013. Plaintiff actually filed a Notice of Appeal (ECF No. 11) on June 14, 2013. In an order filed on June 18, 2013, the United States Court of Appeals for the Tenth Circuit advised Plaintiff that the Notice of Appeal appeared to be untimely. (See ECF No. 16.)

The Court must construe the “Request for Leave to File Late Notice of Appeal” liberally because Plaintiff is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. See *Hall*, 935 F.2d at 1110. For the reasons stated below, the “Request for Leave to File Late Notice of Appeal” will be denied.

Pursuant to Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, a notice of appeal in a civil case generally must be filed with the clerk of the district court within thirty days after the judgment or order appealed from is entered. Pursuant to Rule 4(a)(5)(A), the Court may extend the time to file a notice of appeal if the party moves for an extension of time within thirty days after the time provided in Rule 4(a) expires and the party shows excusable neglect or good cause. Pursuant to Rule 4(a)(5)(C), an extension of time to file a notice of appeal may not exceed thirty days after the time provided in Rule 4(a) expires or fourteen days after an order granting an extension of time is entered, whichever is later.

As noted above, the Court’s order dismissing this action and the final judgment

were entered on March 6, 2013. Although Plaintiff alleges he “was wholly unaware of this Court[']s decision to dismiss [this] case” (ECF No. 18 at 1), the Court notes that Plaintiff filed a motion to reconsider (ECF No. 7) on March 28, 2013, in which he asked the Court to reconsider the order dismissing this action. On April 3, 2013, the Court entered an Order (ECF No. 8) denying the motion to reconsider. As the Tenth Circuit has noted, the Court’s Order denying the timely motion to reconsider extended the thirty-day period to file a notice of appeal until May 3, 2013. (See ECF No. 16 at 2.)

The Court finds that the “Request for Leave to File Late Notice of Appeal” is untimely because it was filed more than thirty days after May 3, 2013. Furthermore, even if the motion was timely, the Court also finds that Plaintiff fails to demonstrate excusable neglect or good cause. Based on the motion to reconsider filed on March 28, 2013, it is apparent that Plaintiff was aware at that time that the instant action had been dismissed. Although it is not clear when Plaintiff received notice that the Court denied the motion to reconsider on April 3, 2013, any delay that did occur resulted from the fact that Plaintiff did not file a notice of change of address advising the Court of his current address until May 13, 2013. (See ECF No. 9.) Therefore, the “Request for Leave to File Late Notice of Appeal” will be denied. Accordingly, it is

ORDERED that Plaintiff’s “Request for Leave to File Late Notice of Appeal” (ECF No. 18) is DENIED.

DATED at Denver, Colorado, this 8th day of July, 2013.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court