

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PABLO A. DAMIANI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 12-1637-RGA
	:	
DETECTIVE DUFFY, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM ORDER

At Wilmington this 24 day of October, 2017, upon review of Plaintiff's motion for an extension of time to appeal (D.I. 309):

Plaintiff filed a motion for an extension of time to file an appeal (D.I. 309) on October 16, 2017.¹ Pursuant to Federal Rule of Appellate Procedure 4(a)(5)(A), the Court may grant Plaintiff's motion only if it was filed no later than thirty (30) days after the expiration of the time originally prescribed by Rule 4(a)(1), and he shows either excusable neglect or good cause. Plaintiff seeks an extension of time to appeal this Court's October 4, 2017 Memorandum Opinion and Order. (See D.I. 305, 306).

In his motion, Plaintiff states that he was recently transferred from a correctional facility in Delaware to a correctional facility in Pennsylvania and has not yet received all of his legal papers and documents. Nor has he had an opportunity to review his legal documents.

¹ The date of filing is determined pursuant to the "mailbox rule." See *Houston v. Lack*, 487 U.S. 266 (1988); *Burns v. Morton*, 134 F.3d 109, 112 (3d Cir. 1998); *Gibbs v. Decker*, 234 F. Supp. 2d 458, 463 (D. Del. 2002). Here, Plaintiff's motion is dated October 16, 2017, and the envelope it was mailed in is post-marked October 17, 2017. Therefore, Plaintiff's motion was delivered to prison authorities for mailing on either October 16 or October 17, 2017. The court concludes that Plaintiff's motion was filed on October 16, 2017 the date it was signed, and the earliest date possible that it could have been delivered to prison officials in Pennsylvania for mailing.

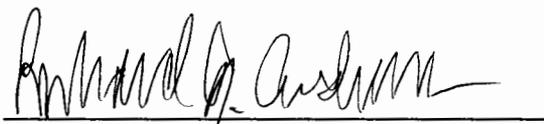
As to the time requirement, the Court issued its Order granting Defendants' motions for summary judgment on October 4, 2017. (D.I. 306). The Federal Rules of Appellate Procedure require that a notice of appeal in a civil case be filed within 30 days after the order appealed from is entered on the district court's docket. See Fed. R. App. P. 4(a)(1)(A). Here, the Order granting Defendants' motions for summary judgment was entered October 4, 2017. Pursuant to the rule, Plaintiff is required to file a motion for extension of time to appeal the order no later than November 3, 2017. Accordingly, Plaintiff's motion for extension of time to file an appeal is timely under Rule 4(a)(5)(A)(i).

The Court must also determine whether Plaintiff has demonstrated excusable neglect or good cause. Factors to consider in determining whether excusable neglect exists include: "the danger of prejudice to the [nonmovant]; the length of the delay and its potential impact on judicial proceedings; the reason for the delay, including whether it was within the reasonable control of the movant; and whether the movant acted in good faith." *In re Diet Drugs Products Liability Litigation*, 401 F.3d 143, 153 n.20 (3d Cir. 2005) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)). As for determining if there is good cause to grant an extension, the "good cause standard applies in situations in which there is no fault - excusable or otherwise. In such situations, the need for an extension is usually occasioned by something that is not within the control of the movant." Fed. R. App. P. 4(a)(5)(A)(ii) Advisory Committee's Note (2002 Amendments).

Here, Plaintiff seeks an extension because of his recent transfer from the Delaware Department of Correction to the Pennsylvania Department of Corrections. Plaintiff had no control over this transfer. The Court concludes that there is good cause for granting an extension and that excusable neglect has been shown because the *Pioneer* factors weigh in favor of granting Plaintiff's motion. More specifically, Plaintiff made a good faith effort in filing his motion without delay. In addition, denying the motion would produce a harsh result for Plaintiff. Therefore, the Court will grant the motion for an extension of time to file a notice of appeal.

IT IS ORDERED that:

The motion for an extension of time appeal the October 4, 2017 memorandum opinion and order (D.I. 309) is GRANTED. The time within which Plaintiff may file a Notice of Appeal to the United States Court of Appeals for the Third Circuit is hereby extended to and includes December 3, 2017, which is not more than thirty (30) days after the prescribed time to file a civil appeal (*i.e.*, November 3, 2017) under Rule 4(a)(1)(A). See Fed. R. App. P. 4(a)(5)(C).


UNITED STATES DISTRICT JUDGE