

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ZACHARY CHESSER,

Plaintiff,

v.

J.S. WALTON, *et al.*,

Defendants.

Case No. 12-cv-1198-JPG-RJD

MEMORANDUM AND ORDER

This matter comes before the Court on two motions filed by plaintiff Zachary Chesser. The first is an *ex parte* motion for a 60-day extension of time to file a notice of appeal under Federal Rule of Civil Procedure 4(a)(5) (Doc. 293) and the second is a motion to file and maintain the first motion *ex parte* (Doc. 291). The defendants object to allowing the motion for an extension of time to remain *ex parte* (Doc. 295).

Chesser's motion for an extension of time to file a notice of appeal reveals appellate strategy. For that reason, the Court believes keeping the motion *ex parte* is appropriate at the present time.

Federal Rule of Appellate Procedure 4 sets forth the timing rules relating to notices of appeal. Rule 4(a)(1)(B) provides that, in a civil case involving the United States or its officers or employees, the notice of appeal must be filed within 60 days of entry of the order from which the appeal is taken. The Court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

Fed. R. App. P. 4(a)(5)(A). If these conditions are met, the Court may extend the deadline the longer of either (1) 30 days beyond the original 60-day period or (2) 14 days after the order granting the extension. Fed. R. App. P. 4(a)(5)(C). Even where both conditions are satisfied, the decision to extend the deadline is at the Court's discretion. *See Garwood Packaging, Inc. v. Allen & Co.*, 378 F.3d 698, 700 (7th Cir. 2004).

The judgment Chesser seeks to challenge was entered May 25, 2017 (Doc. 288). Thus, under Rule 4(a)(1)(B), Chesser has until July 24, 2017, to file a notice of appeal. His current motion is well within the time period set forth in Rule 4(a)(5)(A)(i). The Court believes there is good cause for an extension, and it is therefore warranted. However, it cannot give Chesser the 60 days he requests. It is only empowered to extend the deadline by 30 days from the deadline set forth in Rule 4(a)(1)(B), that is, until August 23, 2017.

For these reasons, the Court:

- **GRANTS** Chesser's *ex parte* motion for an extension of time to file a notice of appeal (Doc. 293);
- **ORDERS** that the appeal period is extended to August 23, 2017;
- **GRANTS** Chesser's motion to file and maintain the motion for an extension of time *ex parte* (Doc. 291); and
- **DIRECTS** the Clerk of Court to maintain *ex parte* the *ex parte* motion for an extension of time to file a notice of appeal (Doc. 293).

IT IS SO ORDERED.

DATED: June 14, 2017

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE