

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
vs.) Case No. 1:11-cv-0672-JMS-DML
)
\$4,826.80 UNITED STATES CURRENCY,)
)
)
Defendant,)
)
)
STEVEN CALDWELL,)
)
)
Interested Party.)

Entry Denying Motion for Return of Property

The movant Steven Caldwell filed a motion for return of property that asks this Court to grant him a belated notice of appeal to appeal the entry of a default judgment that was entered in 2012. His motion **is denied** [dkt. 36]. Rule 4(a) of the *Federal Rules of Appellate Procedure* requires that a notice of appeal in a civil case in which the United States is a party be filed in the district court within 60 days of the entry of the judgment or order appealed. A default judgment was entered in this case on July 13, 2012, (dkt. 34), and movant Steven Caldwell had until September 11, 2012, to file his notice of appeal. Here, in 2012, Caldwell failed to report his current address to the Court, and as a result, the Court concluded that he abandoned his claim to the defendant currency (dkts. 26, 27, 28). A default judgment was entered on July 13, 2012 (dkts. 33, 34).

Pursuant to Rule 4(a)(5) of *Federal Rules of Appellate Procedure* the district court may extend the time to file a notice of appeal if the motion for extension of time is filed no later than

30 days after the time prescribed by Rule 4(a) expires and the moving party shows excusable neglect or good cause. No extension under Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later. Because Caldwell missed his Rule 4(a) deadline by almost two (2) years, he has exceeded the thirty (30) day window available under Rule 4(a)(5).

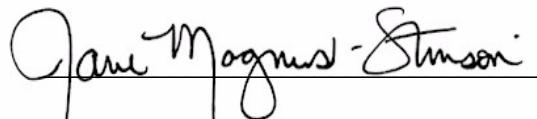
Rule 4(a)(6) of the *Federal Rules of Appellate Procedure* is also of no use to Caldwell. This Rule allows the district court to reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if the motion to reopen is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice under *Federal Rule of Civil Procedure* 77(d) of the entry, whichever is earlier.

Caldwell does not provide any information in his motion for return of property as to when he received notice of the entry of the default judgment; however, this Court specifically found that Caldwell abandoned his claim for failing to report his current address to the Court. Thus, he can find no refuge in *Federal Rules of Appellate Procedure* 4(a)(6) or *Federal Rules of Civil Procedure* 77(d).

Because Caldwell's motion for file a belated appeal is untimely, this Court is without authority to reopen the time to appeal. *See Tinsley v. City of Indianapolis*, 92 F.3d 1187, 1996 WL 417562 (7th Cir. 1996) (unpublished opinion). For these reasons the motion for belated appeal [dkt. 36] is **DENIED**.

IT IS SO ORDERED.

Date: 9/16/2014



Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

Distribution:

Steven Caldwell, #978529
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