

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO**

REVEL ZAIN

PLAINTIFF

v.

CIVIL ACTION NO. 4:12-CV-P5-M

ADVANCE HEALTH CARE PROVIDER et al.

DEFENDANTS

MEMORANDUM AND ORDER


On September 16, 2013, this Court entered a Memorandum Opinion and Order granting in part and denying in part Defendant Blue's motion for summary judgment. *See* DN 39. The denial in part was without prejudice to filing a properly supported motion for summary judgment.

Plaintiff has filed a notice of appeal from that Order. "As a general rule, a district court no longer has jurisdiction over an action as soon as a party files a notice of appeal" unless "the appeal is untimely, presents issues that the appellate court had previously decided in the same case, or is from a non-final, non-appealable order." *Pittock v. Otis Elevator Co.*, 8 F.3d 325, 327 (6th Cir. 1993). In this case, the Court has reviewed the notice of appeal filed by Plaintiff (DN 40) and has concluded that it arises from a non-final, non-appealable order. A notice of appeal from a plainly non-appealable order may properly be ignored by the district court. *Cochran v. Birkel*, 651 F.2d 1219, 1222 (6th Cir. 1981). Accordingly, while the district court lacks jurisdiction to outright dismiss the improper appeal, *Dickerson v. McClellan*, 37 F.3d 251, 252 (6th Cir. 1994), it may nevertheless proceed to adjudicate the merits of the underlying action as if the improper appeal had not been filed. *Cochran*, 641 F.2d at 1222.

IT IS THEREFORE ORDERED that the deadline for filing a properly supported summary-judgment motion is **30 days** from entry of this Order. Should Defendant submit a motion for summary judgment, Plaintiff may file his response **within 21 days** of service of the

motion. Defendant may file a reply **within 14 days** of service of the response. If Defendant does not file a motion for summary judgment, this matter will be set for trial.

Date: October 17, 2013


Joseph H. McKinley, Jr., Chief Judge
United States District Court

cc: Plaintiff, *pro se*
Counsel of record
4414.009