

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

ROBERT JACKSON, III

CIVIL ACTION NO. 10-cv-0909

VERSUS

JUDGE S. MAURICE HICKS, JR.

STEVE PRATOR, ET AL

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

The Fifth Circuit remanded this case for a determination of whether the district court should extend the time for filing an appeal such that Plaintiff Robert Jackson, III's ("Jackson") Notice of Appeal (Record Document 30) is deemed timely under Federal Rule of Appellate Procedure 4(a). Now before this Court is the Report and Recommendation of the Magistrate Judge (Record Document 37), recommending that Jackson's time to appeal not be extended. Jackson has filed written objections (Record Document 38) and an affidavit (Record Document 39).

This Court first notes that Jackson did not file "a motion for excusable neglect that was not looked upon by the district court," as alleged in his written objections. Record Document 38 at 3. Rather, the Fifth Circuit *treated* statements made in his Notice of Appeal as a timely motion for finding excusable neglect for filing the Notice of Appeal late. Additionally, the affidavit submitted by Jackson does not comply with the requirements of Title 28, United States Code, Section 1746 because Jackson did not "declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct." Rather, he simply "solemnly affirm[ed]" the contents of his affidavit. Record Document 39 at 1. For these reasons and the others set forth in the Report and Recommendation of the Magistrate Judge, the undersigned concurs that Jackson was neglectful in informing the

court of his change of address and that he has not shown , under the Pioneer factors, that his neglect was excusable.

Accordingly, for the reasons assigned in the Report and Recommendation of the Magistrate Judge previously filed herein, and having thoroughly reviewed the record, including the written objections (Record Document 38) and affidavit (Record Document 39) filed, and concurring with the findings of the Magistrate Judge under the applicable law;

IT IS ORDERED that Plaintiff's motion under Federal Rule of Appellate Procedure 4(a)(5) to extend the time to file a notice of appeal is denied. The Clerk of Court is directed to return this case to the Fifth Circuit Court of Appeals for further proceedings as appropriate.

THUS DONE AND SIGNED at Shreveport, Louisiana, this the 19th day of November, 2013.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE