

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ISAAC D. HARRIS

Plaintiff,
v.

FNU MILLER, AND JAMES ZUMMER

Defendants.
_____ /

Case No. 17-10415

Honorable Nancy G. Edmunds

**ORDER AND OPINION DENYING PLAINTIFF'S MOTION
TO REOPEN THE TIME TO FILE AN APPEAL [22]**

Currently before the Court is *pro se* Plaintiff Isaac D. Harris's motion to reopen the time to file an appeal of the Court's February 16, 2018 order and opinion dismissing his case. Plaintiff states the he did not receive a copy of the Court's February 16, 2018 order, and that he did not learn about the order until October 23, 2018. Plaintiff requests that the Court provide him with a copy of the February 16, 2018 order and reopen the time for him to file a notice of appeal. For the reasons that follow, Plaintiff's motion is DENIED.

I. Background

Plaintiff filed this *pro se* civil rights case against Defendants Fnu Miller, a Lieutenant at Saginaw Correctional Facility, and James Zimmer, a Resident Unit Manager at Saginaw Correctional Facility (collectively "Defendants"). (ECF Nos. 1 & 2.) On January 16, 2018, the Magistrate Judge entered her report and recommendation to grant Defendants' motion to dismiss Plaintiff's complaint for failing to plead facts sufficient to state a claim upon which relief can be granted. (ECF No. 18.) On February 06, 2018 and February 12, 2018, Plaintiff submitted objections to the Magistrate Judge's report.

(ECF Nos. 19 & 20.) And on February 16, 2018, the Court entered its order and opinion accepting and adopting the Magistrate Judge's report and dismissing Plaintiff's claims. (ECF No. 21.)

Plaintiff asserts that he did not receive a copy of the Court's February 16, 2018 order. On October 23, 2018, at Plaintiff's request, the Court sent Plaintiff an up-to-date copy of the Docket Sheet. Plaintiff claims that he learned of the Court's February 16, 2018 order for the first time after receiving the Docket Sheet, and subsequently filed this motion requesting a copy of the order and that the Court reopen the time for him to file an appeal.

II. Analysis

Federal Rule of Appellate Procedure 4(a)(6) governs the Court's reopening of the time to file an appeal in a civil case. The rule provides that a district court may reopen the time to file an appeal for a period of 14 days only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

FEDERAL RULE OF CIVIL PROCEDURE 4.

Plaintiff's motion does not satisfy Rule 4(a)(6)(B). The phrase "whichever is earlier" means that the Court cannot reopen the time to file an appeal more than 180 days after the entry of the order regardless of the date the party actually learns of the order. Here, Plaintiff's deadline to file a motion requesting the Court to reopen the time file an

appeal was August 15, 2018 (180 days after February 16, 2018). Although the Court recognizes that Plaintiff is proceeding in this case *pro se*, the Court is bound by Rule 4(a)(6). Because Plaintiff's motion was untimely, Plaintiff's request to reopen the time to file an appeal must be denied.

III. Conclusion

For the above-stated reasons, Plaintiff's motion to reopen the time to file an appeal is DENIED.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: November 27, 2018

I hereby certify that a copy of the foregoing document was served upon counsel of record on November 27, 2018, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager