

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

RICHARD A. O'DONNELL,

Plaintiff,

v.

ORDER

Civil File No. 10-2523 (MJD/LIB)

LAKES STATE BANK, et al.,

Defendants.

Richard A. O'Donnell, pro se.

Joseph J. Cassioppi and David R. Marshall, Fredrikson & Byron, PA, Counsel for Defendants.

The above-entitled matter comes before the Court on Plaintiff Richard A. O'Donnell's appeal of Magistrate Judge Leo I. Brisbois' November 21, 2011 Order denying with prejudice Plaintiff's motions to compel certain documents from the FDIC pursuant to a subpoena duces tecum.

Plaintiff's appeal was filed with this Court long after the deadline set by Local Rule 72.2(a). Plaintiff asserts that he mistakenly filed his timely appeal with the Eighth Circuit Court of Appeals instead of with this Court. This Court has discretion to hear an untimely appeal of a magistrate judge's order. See

United States v. Meyer, 439 F.3d 855, 858 (8th Cir. 2006). In this instance, based on Plaintiff's attempt to file a timely appeal, albeit in the wrong court, the Court exercises its discretion to review Plaintiff's appeal on the merits. However, the Court warns Plaintiff that future failures to follow the Local Rules are unlikely to be excused.

This Court will reverse a magistrate judge's order on a nondispositive issue if it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); D. Minn. L.R. 72.2(a). The Court has reviewed the submissions and the record in this case and concludes that Magistrate Judge Brisbois' November 21, 2011 Order is neither clearly erroneous nor contrary to law. Plaintiff has failed to show that a subpoena was properly served on the FDIC, despite numerous opportunities granted by Magistrate Judge Brisbois. Therefore, the November 21, 2011 Order is affirmed.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

HEREBY ORDERED that:

1. United States Magistrate Judge Leo I. Brisbois' November 21, 2011 Order [Docket No. 146] is **AFFIRMED**.

2. Defendant's appeal of that order [Docket No. 154] is **DENIED**.

Dated: February 13, 2012

s/ Michael J. Davis _____

Michael J. Davis

Chief Judge

United States District Court