

IN THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

MICHAEL ANTHONY KING

PLAINTIFF

v.

CIVIL ACTION NO. 2:11CV00016-SA-JMV

W. W. GRAINGER, INC.

DEFENDANT

FINAL JUDGMENT ADOPTING REPORT AND RECOMMENDATION

On consideration of the file and record of this action, the court finds that the Report and Recommendation of the United States Magistrate Judge dated January 26, 2012, was on that date duly served upon the parties; that more than fourteen days have elapsed since service of said Report and Recommendation; and that no objection thereto has been filed or served by any party. The court is of the opinion that the Magistrate Judge's Report and Recommendation should be approved and adopted as the opinion of the court.

The court observes that on February 21, 2012 the plaintiff filed a Notice of Appeal to the Fifth Circuit Court of Appeals wherein he specifically refers to his desire to appeal the January 26, 2012 Report and Recommendation of the United States Magistrate Judge. The plaintiff's Notice of Appeal, however, was filed prematurely. The Report and Recommendation was not yet a final judgment because this court had not yet decided whether to adopt the recommendation contained therein. Pursuant to Federal Rule of Appellate Procedure 4(a)(1), a "notice of appeal required by Rule 3 must be filed with the district clerk within 30 days *after the judgment or order* appealed from is entered." A Report and Recommendation is neither a judgment nor an order in and of itself. Only an order from the district court adopting a Report and Recommendation recommending dismissal of all claims constitutes an a judgment or order for purposes of Rule 4(a)(1). Nevertheless, Rule

4(a)(2), which states that “[a] notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of an after the entry” will render the plaintiff’s Notice of Appeal as filed on the date of entry of this Final Judgment since the court has adopted the subject Report and Recommendation.

It is, therefore

ORDERED:

1. That the Report and Recommendation of the United States Magistrate Judge dated January 26, 2012, is hereby approved and adopted as the opinion of the court.

2. That the plaintiff’s December 1, 2011 motion for partial summary judgment [docket number 147] is hereby DENIED and the defendant’s November 23, 2011 motion for summary judgment [docket number 139] is hereby GRANTED.

3. That all of the plaintiff’s claims are DISMISSED WITH PREJUDICE.

4. This case is closed with the parties to bear their own costs.

THIS, the 8th day of March, 2012.

/s/ Sharion Aycock
U.S. DISTRICT COURT