

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF MISSOURI  
 NORTHERN DIVISION

GEORGE ILGENFRITZ,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 2:06CV00055 ERW
	)	
TOMMY TIPLER, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiff’s Motion to Reopen the Time to File an Appeal and/or Extend the Time for Filing a Notice of Appeal [doc. #97].

On September 28, 2009, this Court granted Defendants’ Motion for Summary Judgment and entered judgment in favor of Defendants and against Plaintiff [docs. #95, 96]. Under Federal Rule of Appellate Procedure 4(a)(1), a party must file a notice of appeal within 30 days after the judgment or order appealed from is entered. Accordingly, October 28, 2009 was the deadline for Plaintiff to file a notice of appeal from this Court’s September 28, 2009 Order. Plaintiff did not meet this deadline, but on November 9, 2009, he filed the pending Motion, seeking an extension of time to file a notice of appeal. Plaintiff states that he failed to meet the deadline because he did not receive a copy of the Court’s September 28, 2009 Order until October 20, 2009, and he still had to locate the proper form and obtain the filing fee.

Federal Rule of Appellate Procedure 4(a)(5) provides that a motion for an extension of time to file a notice of appeal may be granted if it is filed no later than 30 days after the deadline for filing the notice of appeal. Additionally, the movant must demonstrate either excusable


neglect or good cause. Plaintiff's Motion was filed on November 9, 2009, well before the expiration of the 30 day period set forth in Rule 4(a)(5), which expires on November 27, 2009. Additionally, this Court finds that Plaintiff's late receipt of the Court's September 28, 2009 Order, in combination with the difficulty presented with filing a *pro se* motion while incarcerated, constitutes good cause. Thus, the Court will grant Plaintiff's Motion.

The Federal Rules of Appellate Procedure provide that an extension under Rule 4(a)(5) cannot exceed 30 days after the deadline for filing a notice of appeal, or 10 days after the date of the order granting the extension, whichever is later. Applying this Rule to the facts of this case, the Court will require Plaintiff to file his notice of appeal no later than November 27, 2009.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's Motion to Reopen the Time to File an Appeal and/or Extend the Time for Filing a Notice of Appeal [doc. #97] is **GRANTED**.

Dated this 10th Day of November, 2009.

  
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E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE