

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

STEPHANIE S. DARDEN,)	
)	
Plaintiff,)	
)	
v.)	No. 2:07CV00031 ERW
)	
MISSOURI DEPARTMENT OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff’s “Motion for Special Order of Appellate Court Permitting Late Filing of Notice of Appeal” [Doc. #31], “Motion to Proceed In Forma Pauperis” [Doc. #33], and “Motion for Leave to File an Amended Complaint” [Doc. #30].

Plaintiff’s motion to file a late appeal is without merit and will be denied.

Pursuant to Rule 4(a)(6) of the Federal Rules of Appellate Procedure:

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but 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 7 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.

The Court finds that none of the circumstances set forth above have been satisfied in this case. The Court's docket sheet indicates that on January 12, 2009, the Court sent a copy of the January 12 Memorandum and Order to plaintiff's counsel via email. As such, plaintiff received notice pursuant to Rule 77(d) of the Federal Rules of Civil Procedure within twenty-one days of the Order to be appealed. Moreover, the letter from plaintiff's counsel to her, dated May 1, 2009, (submitted as part of her motion) indicates that she knew of the dismissal as early as May 4th or 5th. To qualify for reopening her appeal, plaintiff would have needed to file her motion within seven days of receiving notice of the dismissal of her case, which she did not do. Last, plaintiff's motion was not filed within 180 days of the date of the judgment. The 180 days expired on June 13, 2009; however, plaintiff signed her motion on June 16, 2009. As such, plaintiff does not meet any of the requirements of Rule 4(a)(6) and her motion will be denied.

Plaintiff's motion to proceed in forma pauperis on appeal will be denied as having not been taken in good faith.¹

Plaintiff's motion to file an amended complaint is untimely and will be denied.

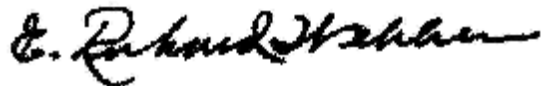
Accordingly,

IT IS HEREBY ORDERED that plaintiff's "Motion for Special Order of Appellate Court Permitting Late Filing of Notice of Appeal" [Doc. #31] is **DENIED**.

IT IS FURTHER ORDERED that plaintiff's "Motion to Proceed In Forma Pauperis" [Doc. #33] is **DENIED**, without prejudice to refiling in the Eighth Circuit Court of Appeals.

IT IS FURTHER ORDERED that plaintiff's "Motion for Leave to File an Amended Complaint" [Doc. #30] is **DENIED**.

So Ordered this 26th Day of June, 2009.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE

¹Plaintiff may refile her motion with the Eighth Circuit Court of Appeals.