

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CLINTON BROOKS JR.,)	4:11CV3114
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
LINCOLN POLICE DEPARTMENT,)	
OFFICER SCHMIDT, #1610, In their)	
individual capacities, OFFICER)	
HITE, #1643, In their individual)	
capacities, and OFFICER)	
PICKERING, #1425, In their)	
individual capacities,)	
)	
Defendants.)	

This matter is before the court on Plaintiff’s Motion for Leave to Appeal In Forma Pauperis (“IFP”). (Filing No. [9](#).) On September 29, 2011, the court dismissed Plaintiff’s claims without prejudice and entered Judgment against him. (Filing Nos. [6](#) and [7](#).) On October 31, 2011, Plaintiff a Notice of Appeal (filing no. [8](#)) and the pending Motion for Leave to Appeal IFP (filing no. [9](#)).

[Federal Rule of Appellate Procedure 4\(a\)\(1\)](#) requires that the notice of appeal in a civil case be filed within thirty days after the judgment or order appealed from is entered. “A timely notice of appeal is both mandatory and jurisdictional.” [Burgs v. Johnson County, Iowa, 79 F.3d 701, 702 \(8th Cir 1996\)](#). Plaintiff did not file his Notice of Appeal until October 31, 2011, 32 days after the entry of judgment against him. (Filing No. [8](#).) Accordingly, Plaintiff’s Notice of Appeal is untimely. However, on the court’s own motion, Plaintiff shall have until December 2, 2011, to file an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Plaintiff fails to submit such an affidavit, Plaintiff’s appeal will not be processed.

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until **December 2, 2011**, to submit an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Plaintiff fails to submit such an affidavit by December 2, 2011, Plaintiff's appeal will not be processed.

2. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: Check for affidavit on December 2, 2011.

DATED this 2nd day of November, 2011.

BY THE COURT:

Richard G. Kopf

United States District Judge

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