

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|--------------------------------|---|-------------------|
| SAMAR AKINS, |) | 4:14CV3204 |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | MEMORANDUM |
| |) | AND ORDER |
| DORY MORE MARTINEZ, SAM I. |) | |
| COOPER, County Attorney, |) | |
| JESSICA MURPHY, Deputy County |) | |
| Attorney, STATE OF NEBRASKA, |) | |
| DEPARTMENT OF HEALTH AND |) | |
| HUMAN SERVICES, MARSHA C., |) | |
| Department of Health and Human |) | |
| Services, DEPARTMENT OF |) | |
| MOTOR VEHICLES, and |) | |
| DISTRICT JUDGE STACY, |) | |
| |) | |
| Defendants. |) | |

This matter is before the court on Plaintiff’s Notice of Appeal (Filing No. [10](#)) and Motion for Leave to Proceed in Forma Pauperis on Appeal (Filing No. [11](#)). The Notice of Appeal was filed 35 days after the court entered its judgment in this case.

Federal Rule of Appellate Procedure 4(a)(1)(A) sets forth that a notice of appeal in a civil case must be filed within 30 days of the entry of judgment. This requirement is both “mandatory and jurisdictional.” [Burgs v. Johnson Cnty., Iowa, 79 F.3d 701, 702 \(8th Cir. 1996\)](#). A district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause, provided that the party moves for the extension of time within 30 days of the expiration of the 30-day period set out in Rule 4(a)(1)(A). [Fed. R. App. P. 4\(a\)\(5\)\(A\)\(ii\)](#). In addition, if a party files one of the post-judgment motions listed in Rule 4(a)(4)(A), the time to file the appeal runs from the entry of the order disposing

of the motion. [Fed. R. App. P. 4\(a\)\(4\)\(A\)](#). An untimely notice of appeal cannot serve as a motion for extension of time to file an appeal. [Burgs, 79 F.3d at 702](#).

Here, the court entered a final judgment dismissing this case on February 10, 2015. Plaintiff filed his Notice of Appeal 35 days later. He did not file any post-judgment motions that would extend the time to file a notice of appeal. In addition, he did not move to extend the time to file a notice of appeal. Accordingly, the court finds Plaintiff did not file a timely notice of appeal. For this reason, the court certifies Plaintiff's appeal is not taken in good faith and he is not entitled to proceed in forma pauperis on appeal. *See* [28 U.S.C. § 1915\(a\)\(3\)](#) (“An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.”).

IT IS ORDERED that:

1. Plaintiff's Notice of Appeal (Filing No. [10](#)) was not timely filed.
2. Plaintiff's Motion for Leave to Appeal in Forma Pauperis (Filing No. [11](#)) is denied.
3. The clerk of the court is directed to send a copy of this order to the Eighth Circuit Court of Appeals.

DATED this 7th day of May, 2015.

BY THE COURT:

s/ John M. Gerrard
United States District Judge

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