Infante v. The City of Hastings, Nebraska, et al Doc. 46

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ALMA ROSA INFANTE,	)	**CASE NO. 4:15CV3047**
	)	
Plaintiff,	)	
	)	**MEMORANDUM**
v.	)	**AND ORDER**
	)	
THE CITY OF HASTINGS, NEBRASKA; ADAMS COUNTY, NEBRASKA; THE STATE OF NEBRASKA; and JOHN AND JANE DOES 1-10,	)	
	)	
Defendants.	)	

This matter is before the Court on the Plaintiff's Motion to Extend Time to File Notice of Appeal (Filing No. 44).

On September 3, 2015, this Court granted the Defendants' motions to dismiss; dismissed Infante's civil rights claims against the State of Nebraska, with prejudice; dismissed her other claims, without prejudice; and entered Judgment. See Memorandum and Order at Filing No. 35, and Judgment at Filing No. 36. Infante did not appeal, nor did she move to alter or amend the Judgment pursuant to Fed. R. Civ. P. 59(e), and the Judgment became final.

After the Judgment became final, Infante filed an untimely Motion for Leave to File Second Amended Complaint, and it was denied. See Filing No. 41. Infante now seeks an extension of time to file an appeal under Fed. R. App. P. 4(a)(5), suggesting that her delay in filing a notice of appeal was due to "excusable neglect or good cause." The Court has reviewed the Index of Evidence (Filing No. 45) submitted in support of the Motion. Essentially, Plaintiff's counsel states that he believed that a dismissal of certain claims "without prejudice" would offer the Plaintiff an opportunity to amend her Complaint, even after the Judgment became final. Such a misunderstanding does not equate to "excusable

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neglect or good cause," supporting an extension of time for the filing of an appeal under Fed. R. App. P. 4(a)(5).

IT IS ORDERED that Plaintiff's Motion to Extend Time to File Notice of Appeal (Filing No. 44) is denied.

DATED this 9th day of November, 2015.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge