

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RODNEY HARRISON,

Plaintiff,

vs.

LANCASTER SHERRIF DEPT.,

Defendant.

4:17CV3042

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's Motion for Leave to Appeal in Forma Pauperis ([Filing No. 15](#)). Plaintiff filed a Notice of Appeal ([Filing No. 14](#)) on July 17, 2017. Plaintiff appeals from the court's Memorandum and Order dated June 8, 2017 ([Filing No. 8](#)), in which the court dismissed this matter without prejudice. In a memo to the court, the clerk of the court notes that Plaintiff's notice of appeal appears to be untimely and advises that the appeal will not be forwarded to the Eighth Circuit until a ruling has been made on the issue of timeliness.

[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 June 8, 2017. Plaintiff filed his Notice of Appeal 39 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. He instead seeks a change of venue to “Douglas County Federal Court.” 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 THEREFORE ORDERED that:

1. Plaintiff’s Notice of Appeal ([Filing No. 14](#)) was not timely filed.
2. Plaintiff’s Motion for Leave to Appeal in Forma Pauperis ([Filing No. 15](#)) is denied.
3. The clerk of court shall forward a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

Dated this 21st day of July, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge