

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DEON A. STEWART,

Plaintiff,

vs.

DEPARTMENT OF CORRECTIONAL
SERVICE STAFF, SHERWOOD, Case
Mannerger; NEUJAHR, Case Mannerger;
SERA NELSON, Warden; CATHY SEARS,
Warden; TARGET BOYD, Warden; and M.
DICINI, Corporal;

Defendants.

4:22CV3104

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's Notice of Appeal, [Filing No. 25](#), and what the Court has docketed as a Supplement to the Notice of Appeal, [Filing No. 31](#), a Motion to Extend Time to Appeal, [Filing No. 28](#), Motion for Filing Fee Balance, [Filing No. 29](#), Motion to Pay Fee and Speed Up Process, [Filing No. 30](#), and a Motion for Status of Appeal, [Filing No. 32](#). Plaintiff's Motion for Status of Appeal, [Filing No. 32](#), is granted, and this order will serve to advise Plaintiff of the status of his appeal and what he needs to do going forward. The Court will now address the Notice of Appeal and pending motions in turn.

I. NOTICE OF APPEAL AND SUPPLEMENT

On October 30, 2023, the Court received Plaintiff's form "Notice of Appeal (Civil)" dated October 26, 2023, but Plaintiff did not sign the Notice of Appeal nor did he identify the judgment or order from which he appeals. [Filing No. 25](#). Also on October 30, 2023, the Clerk of Court advised Plaintiff that his Notice of Appeal was unsigned and therefore deficient. The Clerk of Court directed Plaintiff to "correct the deficiency" (i.e., file a

signed Notice of Appeal) within 14 days, or the pleading “may be stricken from the record of this case.” Filing No. 26, Text Order.

On November 9, 2023, Plaintiff filed his Supplement to the Notice of Appeal, which consists of his original Notice of Appeal form with a checkmark indicating he appeals from this Court’s “Judgment,” but Plaintiff again failed to sign the Notice of Appeal in the space provided for his signature. [Filing No. 31](#). Because Plaintiff has failed to correct the signature deficiency, the Court shall order Plaintiff to file a signed Notice of Appeal in accordance with [Federal Rule of Civil Procedure 11](#) and the Court’s Local Rules. This matter cannot proceed until the Notice of Appeal is signed.

FAILURE TO CORRECT THE DEFECT MAY RESULT IN THE NOTICE OF APPEAL BEING STRICKEN FROM THE RECORD WITHOUT FURTHER NOTICE AND NO APPEAL BEING PROCESSED.

To aid in correction of this deficiency and the processing of Plaintiff’s appeal, the Court will direct the Clerk of Court to send to Plaintiff a copy of his Supplement to the Notice of Appeal, [Filing No. 31](#). Plaintiff must sign the Notice of Appeal form on the line provided for his signature which looks like this:

s/_____
Attorney or Pro Se Party

See [Id.](#)

II. MOTION TO EXTEND

Plaintiff submitted correspondence dated October 30, 2023, and filed in this Court on November 6, 2023, in which he indicates issues with sending his appeal form and asks for “a little more time to submit the appeal form.” [Filing No. 28](#).

“An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4.” [Fed. R. App. P. 3\(a\)\(1\)](#). Pursuant to [Federal Rule of Appellate Procedure 4\(a\)\(1\)\(A\)](#), the notice of appeal in a civil case must be filed within 30 days of the entry of judgment. 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\(a\)\(4\)\(A\)](#). 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\(a\)\(5\)\(A\)](#).

Here, the Court entered a final judgment on April 17, 2023, dismissing this case without prejudice pursuant to Plaintiff’s motion for voluntary dismissal. [Filing No. 17](#); [Filing No. 18](#). On April 19, 2023, Plaintiff filed what the Court liberally construed as a Motion for Relief from Judgment pursuant to [Federal Rule of Civil Procedure 60\(b\)](#). The Court entered a Memorandum and Order disposing of Plaintiff’s [Rule 60\(b\)](#) motion on October 11, 2023, and thus Plaintiff had until November 13, 2023, to file a notice of appeal. See [Filing No. 23 at 14–15](#). While Plaintiff filed a Notice of Appeal before the November 13, 2023 deadline, the Notice of Appeal is unsigned and deficient. As Plaintiff’s Motion to Extend the time to file his appeal was timely filed, the Court will grant Plaintiff’s Motion to Extend and Plaintiff shall have until December 13, 2023, to file a signed copy of his Notice of Appeal. See [Fed. R. App. P. 4\(a\)\(5\)\(C\)](#).

III. MOTIONS REGARDING FILING FEES

On November 6, 2023, Plaintiff submitted correspondence dated November 2, 2023, which the Court docketed as a Motion for Filing Fee Balance. [Filing No. 29](#). In his motion, Plaintiff asks, “How much money I need to pay off the total for all the cases[?] What’s the price[?]” *Id.* Though unclear, Plaintiff seems to indicate his belief that he needs to pay off all his cases in order to have his case heard or his appeal progress. Plaintiff expresses a similar sentiment in what the Court docketed as his Motion to Pay Fee and Speed Up Process filed on November 9, 2023. [Filing No. 30](#). In that motion, Plaintiff states he would “like to pay all cost an[d] fee off, also like to pay for trail [sic] and I like to speed up the process please an[d] thanks.” *Id.*

Upon consideration, the Court will grant Plaintiff’s Motion for Filing Fee Balance, [Filing No. 29](#), to the extent the Court will direct the Clerk’s office to provide Plaintiff with a balance summary of his filing fees owed in this case and his other pending case, *Stewart v. Hollister et al.*, 4:23-cv-03171-JFB-PRSE.

The Court, however, will deny Plaintiff’s Motion to Pay Fee and Speed Up Process, [Filing No. 30](#), because Plaintiff is not required to pay all of his outstanding filing fees at this juncture in order for his appeal to proceed. The Court granted Plaintiff leave to proceed in forma pauperis in this matter, Plaintiff paid his initial partial filing fee, and Plaintiff’s institution is responsible for collecting and remitting the remaining monthly payments in accordance with [28 U.S.C. § 1915\(b\)](#). Collection of Plaintiff’s remaining filing fee payments has no bearing on the processing of Plaintiff’s appeal. Rather, in order for Plaintiff’s appeal to proceed, Plaintiff must file a signed copy of his Notice of Appeal as the Court explained above. If Plaintiff files a signed Notice of Appeal, then

the Court will address Plaintiff's authorization to proceed in forma pauperis on appeal, but, again, the need to collect any portion of the appellate filing fee will not prevent the Court from processing Plaintiff's appeal.

IV. CONCLUSION

Plaintiff now has until December 13, 2023 to file a signed copy of his Notice of Appeal. The Clerk of Court will send to Plaintiff a copy of the Notice of Appeal that Plaintiff must sign on the line provided for his signature and return to the Court. This matter cannot proceed until Plaintiff files a signed Notice of Appeal. Plaintiff does not need to pay off all his filing fees at this time, and the Court will provide Plaintiff a summary of the balances owed in his cases for informational purposes only.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Status of Appeal, [Filing No. 32](#), is granted.
2. Plaintiff's Motion to Extend, [Filing No. 28](#), is granted.
3. Plaintiff has until **December 13, 2023** to file a signed copy of the Notice of Appeal. The Clerk of Court is directed to send to Plaintiff a copy of [Filing No. 31](#), the Supplement to the Notice of Appeal.
4. To be clear, Plaintiff must sign his name on the Notice of Appeal on the line provided for his signature and send the signed Notice of Appeal back to the Court by **December 13, 2023**.
5. Failure to comply with this Memorandum and Order may result in the Notice of Appeal being stricken from the record without further notice and no appeal being processed.

6. Plaintiff's Motion for Filing Fee Balance, [Filing No. 29](#), is granted in accordance with this Memorandum and Order. The Clerk of Court is directed to provide Plaintiff with a balance summary of his filing fees owed in this case and his other pending case, *Stewart v. Hollister et al.*, 4:23-cv-03171-JFB-PRSE

7. Plaintiff's Motion to Pay Fee and Speed Up Process, [Filing No. 30](#), is denied.

8. The Clerk of Court is directed to set a pro se case management deadline in this matter with the following text: **December 13, 2023**: deadline for submission of a signed notice of appeal.

Dated this 14th day of November, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", with a stylized flourish at the end.

Joseph F. Bataillon
Senior United States District Judge