

In this matter, Plaintiff did not seek an extension of the time in which to file a notice of appeal. Regardless, an extension under Rule 4 would still be appropriate, provided that the requisite showing of excusable neglect or good cause has been made. The Eighth Circuit has clarified “excusable neglect” as follows:

[T]he determination ... is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission. ... [T]hose circumstances ... include the danger of prejudice to the [non-moving party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

[Lowry, 211 F.3d at 462](#) (citation and quotation omitted).

Here, Plaintiff’s Notice of Appeal does not show excusable neglect or good cause. Indeed, Plaintiff has not stated any reason for his failure to file a timely notice of appeal. As such, Plaintiff’s notice of appeal is untimely and is therefore invalid.

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Notice of Appeal (Filing No. [12](#)) is untimely; and
2. The Clerk of the court shall not process the appeal to the Court of Appeals. The Clerk of the court is directed to forward a copy of this Memorandum and Order to the parties and to the Eighth Circuit Court of Appeals.

DATED this 22nd day of October, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge