IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

TADESSE BAYENE, Plaintiff, v. FARMLAND FOODS, INC., Defendant.	)	8:10CV256 MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's Notice of Appeal (Filing No. 17) and Motion for Leave to Appeal In Forma Pauperis (Filing No. 18). The Court dismissed plaintiff's claims in this matter on November 30, 2010 (Filing Nos. 13 and 14). Plaintiff filed an objection to the dismissal (Filing No. 15), which the Court liberally construed as a motion for reconsideration and denied on February 4, 2011 (Filing No. 16). More than one year later, on June 11, 2012, plaintiff filed his Notice of Appeal (Filing No. 17). Therefore, excluding the time during the pendency of plaintiff's objection, 493 days elapsed between the Court's judgment and the filing of plaintiff's Notice of Appeal.

Federal Rule of Appellate Procedure 4 ("Rule 4") governs the time in which a notice of appeal must be filed. As set forth in Rule 4, a notice of appeal "must be filed with the district clerk within 30 days after the judgment or order appealed from is entered." Fed. R. App. P. 4(a)(1)(A). This

time limit is mandatory and jurisdictional, and failure to file a timely notice of appeal deprives an appellate court of jurisdiction. *See, e.g.*, *Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 462-64 (8th Cir. 2000) (citations omitted). However, Rule 4 permits an extension of time in which to file an appeal if (1) such extension is requested within the "extension period," i.e., within 30 days after expiration of the appeal deadline; and (2) regardless of the "extension period," the appellant shows excusable neglect or good cause for the delayed filing of the appeal. Fed. R. App. P. 4(a)(5)(A).

Plaintiff did not seek an extension of the time in which to file a notice of appeal. Regardless, an extension under Rule 4 could still be appropriate, provided that the requisite showing of excusable neglect or good cause has been made.

Plaintiff has failed to set forth any reason for his failure to timely file his notice of appeal (Filing No. 17). He only argues the merits of his claims and includes various documents relating to a totally separate matter. (*Id.*) The Court finds this is insufficient to show excusable neglect or good cause. Thus, plaintiff's notice of appeal is untimely and is therefore invalid.

IT IS ORDERED:

1. Plaintiff's Notice of Appeal (Filing No. 17) is untimely.

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.

3. Plaintiff's Motion for Leave to Appeal In Forma Pauperis (Filing No. 18) is denied.

DATED this 28th day of June, 2012.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge
United States District Court

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