

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

VICTOR FILIPE,

Plaintiff,

vs.

FBI, and SHERIFF OFFICE,

Defendants.

8:18CV215

**MEMORANDUM
AND ORDER**

This matter is before the court on the Notice of Appeal ([filing no. 14](#)) and Motion for Leave to Appeal In Forma Pauperis ([filing no. 16](#)) filed by Plaintiff Victor Filipe on July 16, 2018. Also before the court is the memorandum from the Clerk of the Court requesting a ruling as to the timeliness of Plaintiff's notice of appeal. ([Filing No. 15.](#))

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. "A timely notice of appeal is both mandatory and jurisdictional." *Burgs v. Johnson Cnty., Iowa*, 79 F.3d 701, 702 (8th Cir. 1996). Moreover, an untimely notice of appeal cannot serve as a motion for extension of time to file an appeal. *Id.* 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\(a\)\(5\)\(A\)](#). In addition, if a party files one of the post-judgment motions listed in Rule (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\(a\)\(4\)\(A\)](#).

Here, the court entered a final judgment dismissing the Complaint on June 1, 2018. (Filing Nos. [12](#) and [13](#).) Therefore, the final day for filing a timely notice of

appeal was July 2, 2018. Plaintiff's Notice of Appeal is postmarked July 13, 2018, and stamped as filed on July 16, 2018. ([Filing No. 14.](#)) Plaintiff did not file any post-judgment motions that would extend the time to file a notice of appeal. *See Fed. R. App. P. 4(a)(4)(A)*. Plaintiff also has not filed a motion to extend the time to file a notice of appeal in this matter. *See Fed. R. App. P. 4(a)(5)(A)(ii)*. Accordingly, the court finds that Plaintiff did not file a timely notice of appeal.

With respect to Plaintiff's Motion to Appeal In Forma Pauperis, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." [28 U.S.C. § 1915\(a\)\(3\)](#). The court hereby certifies that the appeal filed by Plaintiff in this case is not taken in good faith because his Complaint was dismissed as frivolous and his appeal is untimely. Since the appeal is not taken in good faith, the petitioner cannot file an appeal in forma pauperis. *See Fed. R. App. P. 24(a)(3)* and [28 U.S.C. § 1915\(a\)\(3\)](#).

IT IS THEREFORE ORDERED that:

1. The court finds Plaintiff did not file a timely notice of appeal.
2. The court will not act on Plaintiff's notice of appeal. ([Filing No. 14.](#))
3. Plaintiff's Motion to Appeal In Forma Pauperis ([filing no. 16](#)) is denied.
4. The clerk of court is directed to send a copy of Plaintiff's notice of appeal and a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

Dated this 16th day of July, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge