

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SIMON ARMIJO,

Plaintiff,

vs.

No. CIV 14-0362 JB/CG

RONY D. HAYES; LARRY CEARLY;
ROBERT GRIEGO and VILLAGE OF
MAGDALENA,

Defendants.

MEMORANDUM OPINION AND ORDER GRANTING MOTION
FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL

THIS MATTER comes before the Court on the Plaintiff's Motion for Extension of Time to File Notice of Appeal, filed October 30, 2017 (Doc. 110)("Motion").¹ Plaintiff Simon Armijo has not replied to Defendants Village of Magdalena and Larry Cearley's Village of Magdalena Defendants' Response to Plaintiff's Motion for Extension of Time to File Notice of Appeal and Request for Clarification, filed November 13, 2017 (Doc. 112)("Response"). The time for Armijo to file a reply has passed.

In the Motion, Armijo requests an extension of time to file a notice of appeal, because he lost files because of a power outage, he is proceeding pro se, he finds the appeal complex, and he

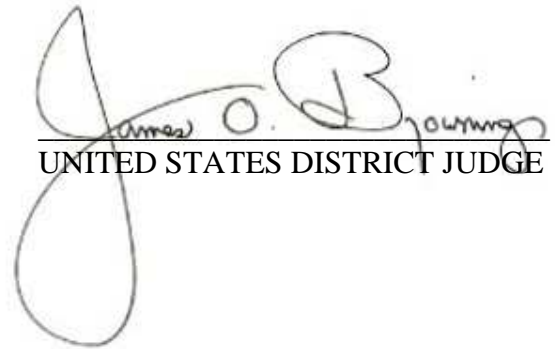
¹The Honorable Carmen E. Garza, United States Magistrate Judge, previously issued an Order Granting Motion for Extension of Time to File Notice of Appeal, filed November 6, 2017 (Doc. 111), ostensibly granting the Motion. Accordingly, Plaintiff Simon Armijo filed an appeal to the United States Court of Appeals for the Tenth Circuit. See Notice of Appeal, filed November 29, 2017 (Doc. 113). The Tenth Circuit issued an Order "partially remanding" the case to the Court. Order (dated December 11, 2017), filed December 12, 2017 (Doc. 119). The Tenth Circuit states that a Magistrate Judge "is not authorized to issue a final ruling on a motion for extension of time to appeal." Order at 1 (citing 28 U.S.C. §§ 636(b)(1)(A)-(B)). The Tenth Circuit states: "Without a valid extension of time, this court lacks jurisdiction over this untimely appeal." Order at 2. The Tenth Circuit concludes that it "may exercise jurisdiction if the district court grants the motion for extension of time." Order at 2.

works construction to support his family. See Motion at 1. The Village Defendants argue that Armijo may not now timely appeal that order. See Response at 2. They request that the Court issue an order prohibiting Armijo from appealing the order dismissing the Village Defendants. See Response at 2. Alternatively, they request that the Court clarify whether the notice of appeal applies to the Village Defendants. See Response at 2.

The Court entered a Final Judgment in this case on September 30, 2017 (Doc. 109), and Armijo filed the Motion on October 30, 2017; therefore, Armijo timely filed the Motion. See Fed. R. App. P. Rule 4(a)(5)(A)(i). Although the Village of Magdalena and Clearly (“Village Defendants”) oppose the Motion, they oppose it only insofar as it would allow Armijo to appeal the order dismissing Armijo’s claims against them.² See Response at 2. The Village Defendants essentially ask the Court to determine the United States Court of Appeals for the Tenth Circuit’s jurisdiction to hear Armijo’s appeal. The Court declines to do so. The Court notes, however, that rule 54(b) of the Federal Rules of Civil Procedure states that, in a case involving multiple claims or parties, an order or decision adjudicating fewer than all of the claims or the rights of all of the parties “does not end the action as to any of the claims or parties.” Therefore, having considered the Motion, the Court concludes that the Motion establishes good cause for an extension and will grant the requested extension.

IT IS ORDERED that the Plaintiff’s Motion for Extension of Time to File Notice of Appeal, filed October 30, 2017 (Doc. 110), is granted, and the deadline for filing a notice of appeal is November 29, 2017. See Fed. R. App. P. 4(a)(5)(c) (providing no extension may exceed 30 days after the prescribed time).

²The Court dismissed the claims against the Village Defendants on March 15, 2016. See Memorandum Opinion and Order, filed March 15, 2016 (Doc. 77).



UNITED STATES DISTRICT JUDGE

Parties and Counsel:

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Plaintiff pro se

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