

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ROBERT RAYMOND REAN,

Civil Case No. 08-1403-KI

Plaintiff,

OPINION AND ORDER

vs.

CITY OF PORTLAND, et al.,

Defendants.

Robert Raymond Rean, REG# 70571-065
Victorville
U.S. Penitentiary
Inmate Mail/Parcels
P.O. BOX 5300
Adelanto, California 92301

Pro Se Plaintiff

J. Scott Moede
City Attorney's Office
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Portland , Oregon 97204

Attorney for Defendants City of Portland, Portland Police Bureau
Santos, Gore and Taylor

Agnes Sowle
County Attorney for Multnomah County, Oregon
Carlo Calandriello
Assistant County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, Oregon 97214

Attorneys for Defendants Multnomah County, Jerri Jarmer and Carl Green

KING, Judge:

The Court treats plaintiff's Amended Notice of Error and Declaration Under Penalty of Perjury (#85) as a Motion to Reopen the Time to File an Appeal. Plaintiff's main concern is that he purportedly did not receive this Court's Opinion and Order dismissing his case and thereby missed his opportunity to appeal to the Ninth Circuit Court of Appeals.

The Opinion and Order dismissing plaintiff's case was docketed on 12/16/2009 and was sent to P.O. Box 5300. The Court did not hear from plaintiff for 254 days, at which time he filed a Notice of Change of Address, giving the Court the P.O. Box of 5300 again. Another 122 days later, plaintiff filed a Motion for Appointment of Counsel. On 1/3/2011, the Court denied the Motion for Appointment of Counsel by minute order reminding plaintiff that the Court had previously dismissed his case.

Plaintiff now presents evidence that the 1/3/2011 minute order was sent to P.O. Box 3500; despite being addressed incorrectly, plaintiff received the minute order. Another 53 days

later, plaintiff filed a Notice with the Court informing the Court that he had not received this Court's Opinion and Order dismissing his case. Plaintiff signed the Notice on 2/18/2011, which is 46 days from the 1/3/2011 minute order.

The Court's authority to reopen the time to file an appeal is restricted by Federal Rule of Civil Procedure 77(d)(2), which prohibits this Court from relieving a party from failing to file a notice of appeal within the time allowed, except as authorized by Federal Rule of Appellate Procedure 4(a) and 28 U.S.C. §2107. Pursuant to Federal Rule of Appellate Procedure 4(a)(6) and 28 U.S.C. §2107, the Court may reopen the time to file an appeal for a period of 14 days, but only if all of the following conditions are met: (A) the Court finds the moving party did not receive notice of the entry of judgment; (B) the motion to reopen is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice, whichever is earlier; and (C) the Court finds that no party would be prejudiced.

Even if the Court found that plaintiff did not receive notice of the entry of judgment, either through some fault of the Court or the U.S. Postal Service, the Court is required to deny plaintiff's motion to reopen the time to appeal. Judgment was issued a year and three months ago, long past the 180 days called for by the rule. Even if the Court found that the first time plaintiff received notice of the dismissal of his case was after receiving the 1/3/2011 minute order, plaintiff did not inform the Court of this fact until 46 days later (counting from the filing date of the minute order to the signature date on plaintiff's notice). Even treating that first notice as a motion to reopen the time to file an appeal, then, plaintiff signed it beyond the 14 days permitted for such a motion.

For the foregoing reasons, the Court denies plaintiff's Motion to Reopen the Time to File an Appeal (#85).

IT IS SO ORDERED.

Dated this 28th day of March, 2011.

/s/ Garr M. King
Garr M. King
United States District Judge