

December 3, 2009

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUITElisabeth A. Shumaker
Clerk of Court

ROBERTO ZAMORA, JR.,

Petitioner - Appellant,

v.

H.A. LEDEZMA, Warden,

Respondent - Appellee.

No. 09-6249
(D.C. No. 5:09-CV-00938-C)
(W.D. Okla.)

ORDER

Before **MURPHY**, **GORSUCH**, and **HOLMES**, Circuit Judges.

Plaintiff Robert Zamora, Jr., appeals from the district court's October 30, 2009 order dismissing his case for failing to pay the initial filing fees. Because of subsequent proceedings in the district court, however, this court lacks jurisdiction to review the district court's October 30 order.

On November 6, 2009, Mr. Zamora filed a document in the district court titled "Objection to Order of Dismissal." The district court construed this document as a motion timely filed pursuant to Federal Rule of Civil Procedure 59(e). In the motion, Mr. Zamora argued that he paid the filing fees as directed by the magistrate judge and provided evidence of payment. In light of this information, the district court entered an order dated November 18, 2009, that

determined Mr. Zamora was “entitled to relief from the Court’s October 30, 2009, Order of Dismissal.” The November 18 order also contemplated the continuation of proceedings in that court once the appeal had been dismissed.

The district court’s November 18 order granted all relief that Mr. Zamora sought through his appeal of the October 30 order of dismissal. The cause for Mr. Zamora’s appeal is now moot. See In re: Overland Park Fin. Corp., 236 F.3d 1246, 1254 (10th Cir. 2001) (“A case is moot when it is impossible for the court to grant any effectual relief whatever to a prevailing party.” (internal quotation omitted)). Further, the district court controversy is live once again, and the October 30 order is no longer final. 28 U.S.C. § 1291; Van Cauwenberghe v. Biard, 486 U.S. 517, 521 (1988) (describing final decision as one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment). As a result, this court lacks jurisdiction to review the order being appealed.

APPEAL DISMISSED. The case is remanded to the district court for further proceedings.

Entered for the Court,
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith
Counsel to the Clerk