

UNITED STATES COURT OF APPEALS April 13, 2011

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

EDWARD ALLEN BUCK,

Plaintiff – Appellant,

v.

ALLEN RAND MYERS; WILLIAM
H. BARRETT, Utah 3rd District Court
Judge; TRACY BROUGHN, Salt Lake
County Sheriff Deputy; SCOTT
BANNON, Sergeant, Salt Lake County
Sheriff Deputy; PAUL BRENNEMAN,
Sergeant, Salt Lake County Sheriff
Deputy; JOHN THORNTON,
Detective, Salt Lake County Sheriff
Deputy; DAVID E. YOCOM, Salt
Lake County District Attorney; N. M.
D'ALESSANDRO, Salt Lake County
Deputy District Attorney; KIM
COWLEY, Salt Lake County Sheriff
Deputy Detective,

Defendants – Appellees.

No. 11-4061
(D.C. No. 2:05-CV-00876-DB)

ORDER

Before **LUCERO**, **TYMKOVICH** and **HOLMES**, Circuit Judges.

This court lacks jurisdiction over this appeal because the notice of appeal
was filed out of time.

Judgment was entered on August 9, 2010 and the notice of appeal was filed on April 4, 2011. In his notice of appeal, the plaintiff contended that he did not receive notice of the entry of judgment until March 28.

Federal Rule of Appellate Procedure 4(a)(6) allows the district court to reopen the time to appeal when a party did not receive notification of the district court judgment within 21 days of entry and a motion is filed within 180 days of the entry or within 7 days of receipt of such notice, whichever first occurs. Here, the plaintiff's notice of appeal could liberally be construed as a Rule 4(a)(6) motion. However, although the plaintiff filed his notice of appeal within 7 days of the date he contends he received notice of the judgment, it was filed beyond 180 days.

Accordingly, the district court did not have authority under Rule 4(a)(6) to reopen the time to appeal. *See* Fed. R. App. P. 26(b) ("the court may not enlarge the time for filing a notice of appeal ... except as specifically provided by law."); *Clark v. Lavallie*, 204 F.3d 1038, 1040 (10th Cir. 2000) (the time limits set forth in Rule 4(a)(6) are mandatory and may not be waived).

In a civil case, in which the United States is a not a party, a notice of appeal must be filed within 30 days of entry of judgment. *See* 28 U.S.C. § 2107(a) (a notice of appeal in a civil matter must be filed within 30 days of entry of judgment); Fed. R. App. P. 4(a)(1)(A) (same). A timely notice of appeal in a civil case is both mandatory and jurisdictional. *See Bowles v. Russell*, 551 U.S.

205, 209, 213 (2007).

Because the notice of appeal was filed late, this appeal is **DISMISSED**.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Ellen Rich Reiter".

Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney