

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 12, 2015

Elisabeth A. Shumaker
Clerk of Court

MARVIN G. NEFF; ALICE NEFF,

Plaintiffs - Appellants,

v.

CHIEF NATE THOMPSON, individually;
OFFICER THERON FIELDING,
individually; WILLARD CITY, a
municipal corporation; TONY ALARID,
individually and as agent for Wasatch
Constables, L.C., a Utah limited liability
company; DEPUTY AUSTIN
BOWCUTT, individually and as agent for
Box Elder County; OFFICER MICHAEL
COLVIN, individually and as agent for
Perry City Police Department of Perry
City, a municipal corporation,

Defendants - Appellees.

No. 15-4052
(D.C. No. 1:11-CV-00157-RJS)
(D. Utah)

ORDER

Before **KELLY**, **McHUGH**, and **MORITZ**, Circuit Judges.

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

In a civil case in which the United States is not a party, a notice of appeal must be filed within 30 days of entry of the order being appealed. *See* 28 U.S.C. § 2107(a) (providing that 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). Judgment was entered in this civil case on September 30, 2014, and the notice of appeal was not filed until April 15, 2015.

This court does not have the discretion to allow an untimely notice of appeal; a timely notice of appeal in a civil case is both mandatory and jurisdictional. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007). Appellants' response to the court's April 22, 2015 show cause order does not establish jurisdiction. The September 29, 2014 order was a final, appealable order. *See Koch v. City of Del City*, 660 F.3d 1228, 1236 (10th Cir. 2011) ("Once the district court granted summary judgment as to all federal claims . . . and remanded the remaining state-law claims to state court, there was nothing left for the court to adjudicate. Its decision was thus final. . . ."). Separate judgment was entered on September 30, 2014, and Appellants' April 15, 2015 notice of appeal is well beyond Federal Rule of Appellate Procedure's 4(a)(1)(A)'s 30-day period.

Because the notice of appeal was filed beyond the 30-day limit, the court lacks jurisdiction over this appeal.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lindy Lucero Schaible
Counsel to the Clerk