

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 12, 2019

Elisabeth A. Shumaker
Clerk of Court

TERRANCE LEE MCMANIS,

Plaintiff - Appellant,

v.

JOHN AND JANE DOES, CDOC
OFFICIALS, CORRECTIONAL
OFFICERS, AND MENTAL HEALTH
HEADS; VARIOUS COUNTY SHERIFF'S
OFFICES; JEFFERSON COUNTY
SHERIFF'S OFFICE; DENVER
SHERIFF'S OFFICE; ADAMS COUNTY
SHERIFF'S OFFICE; CONEJOS COUNTY
SHERIFF'S DEPARTMENT; COLORADO
PAROLE DEPARTMENT; COLORADO
PAROLE BOARD MEMBERS; SOTMP
TEAM AND PROGRAM ADMIN.;
STATE OF COLORADO GOVERNOR;
SOTB MEMBERS; VARIOUS JUDGES
IN IDAHO AND COLORADO;
ATTORNEY GUILLERMO GARIBAY;
VARIOUS CDOC CASE MANAGERS;
TOM CLEMENTS, Administrative Head;
JOHN AND JANE DOE CBI OFFICERS,

Defendants - Appellees.

No. 18-1431
(D.C. No. 1:18-CV-01220-LTB)
(D. Colo.)

ORDER*

Before **BRISCOE**, **HOLMES**, and **MATHESON**, Circuit Judges.

* This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.

Plaintiff-Appellant Terrance McManis, a Colorado state inmate proceeding pro se,¹ filed this 42 U.S.C. § 1983 action alleging that his constitutional rights were violated when he was incorrectly classified as a sex offender. The district court dismissed his complaint, and McManis appeals the dismissal. Because McManis did not file a timely notice of appeal, we must DISMISS this appeal for lack of jurisdiction.

I

On May 17, 2018, McManis, at that time confined in a Colorado state correctional facility, filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 naming numerous defendants, including various Colorado Department of Corrections (CDOC) case managers, various county Sheriff's offices, the Colorado Parole Department, the Governor of Colorado, and various judges in Idaho and Colorado. McManis's complaint listed 117 "claims," and asserted violations of his Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights. Each of McManis's claims arose from his alleged improper classification as a sex offender in 2011 while incarcerated in the CDOC.

The district court ordered McManis to cure deficiencies and file an amended complaint, which McManis did on June 20, 2018. On June 28, 2018, the district court issued an order discussing legal deficiencies in McManis's amended complaint

¹ Because McManis proceeds pro se, we liberally construe his filings but do not act as his advocate. Yang v. Archuleta, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

and directing him to file a second amended complaint by July 30, 2018. McManis did not file a second amended complaint, and the district court dismissed his amended complaint on August 17, 2018.

On September 17, 2018, McManis filed in the district court a motion seeking an extension of the “time limit for filing motions, requests, and appeal,” ROA at 108, and a motion to proceed in forma pauperis. On September 24, 2018, the district court granted McManis’s motion for an extension of time and denied as moot his motion to proceed in forma pauperis. The district court granted McManis until October 8, 2018, to file a notice of appeal.

On October 23, 2018, McManis filed the following: (1) a motion requesting that his filings be considered timely; (2) a motion for the appointment of counsel on appeal with a memorandum in support; (3) an application to proceed in forma pauperis on appeal; and (4) a notice of appeal. On November 8, 2018, the district court denied McManis’s motion requesting that his filings be considered timely and denied without prejudice his motion for appointment of counsel.

II

The time to appeal in a civil case is mandatory and jurisdictional. Bowles v. Russell, 551 U.S. 205, 209–10, 214 (2007); In re Latture, 605 F.3d 830, 834–35 (10th Cir. 2010). We must, therefore, first determine if McManis timely filed a notice of appeal.

Federal Rule of Appellate Procedure 4 requires that a party file a notice of appeal “within 30 days after entry of the judgment or order appealed from.” Fed. R.

App. P. 4(a)(1)(A).² Rule 3 requires that the notice of appeal “specify the party or parties taking the appeal,” “designate the judgment, order, or part thereof being appealed,” and “name the court to which the appeal is taken.” Fed. R. App. P. 3(c)(1)(A)–(C). The purpose of Rule 3 is to provide “sufficient notice to other parties and the courts.” Smith v. Barry, 502 U.S. 244, 248 (1992). Thus, when a document filed within the time period specified in Rule 4 provides the information required by Rule 3, it may serve as a notice of appeal if it is the “functional equivalent” of the formal notice required by Rule 3. Id.; see also Manco v. Werholtz, 528 F.3d 760, 762 (10th Cir. 2008).

Although we “liberally construe” Rule 3’s requirements, Smith, 502 U.S. at 248, none of the documents McManis filed before October 8, 2018, are the functional equivalent of a notice of appeal. McManis filed two documents within the time to appeal: a motion seeking an extension of the “time limit for filing motions, requests, and appeal,” ROA at 108, and a motion to proceed in forma pauperis. Neither of these motions conveys McManis’s intention to appeal the district court’s judgment. In particular, neither motion “designate[s] the judgment, order, or part thereof being appealed,” or otherwise conveys McManis’s intention to appeal the district court’s judgment. Fed. R. App. P. 3(c)(1)(B). McManis therefore failed to file a timely notice of appeal. See Manco, 528 F.3d at 762.

² The district court extended McManis’s time to appeal to October 8, 2018, so that date informs our timeliness determination. See Fed. R. App. P. 4(a)(5).

Because “the timely filing of a notice of appeal in a civil case is a jurisdictional requirement,” Bowles, 551 U.S. at 214, we must DISMISS this appeal for lack of jurisdiction.³

Entered for the Court

Mary Beck Briscoe
Circuit Judge

³ We deny McManis’s motion to proceed in forma pauperis because he “has failed to show the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” Rolland v. Primesource Staffing, L.L.C., 497 F.3d 1077, 1079 (10th Cir. 2007).