

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

January 20, 2023

Christopher M. Wolpert
Clerk of Court

LONNIE NORTON,

Plaintiff - Appellant,

v.

MICHAEL PARSONS; DANNY WHITE;
F. MCNIELL; FNU ROMERO,

Defendants - Appellees.

No. 23-4006
(D.C. No. 4:20-CV-00038-DN)
(D. Utah)

ORDER

Before **HARTZ**, **BACHARACH**, and **MORITZ**, Circuit Judges.

Appellant Lonnie Norton—a prisoner in the Utah State Correctional Facility who is proceeding pro se—seeks to appeal an October 22, 2021 order [ECF No. 46] in which the district court, among other things, granted: (1) defendants’ motion for protective order as to any discovery request predating the report they filed pursuant to *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978) [ECF No. 23]; and (2) defendants’ motion [ECF No. 19] for leave to file certain exhibits to the *Martinez* report under seal (which exhibits they nonetheless provided to Norton). Norton also seeks to challenge the district court’s “failure to grant [his] motion to compel discovery filed on October 15, 2021.” [ECF No. 44]. Both the motion to compel and the case itself remain pending before the district court.

Upon consideration of the district court's docket, the district court's October 22, 2021 order, and the applicable law, the court dismisses Mr. Norton's appeal for lack of jurisdiction for the reasons set forth below.

First, "[a] timely notice of appeal is both mandatory and jurisdictional." *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1239 (10th Cir. 2006) (quotation omitted). And, although Mr. Norton is proceeding pro se, he must still comply with the time requirements in the procedural rules. *See Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007). Moreover, this court has no authority to make equitable exceptions to jurisdictional requirements, *see Bowles v. Russell*, 551 U.S. 205, 216 (2007), or to extend the time for filing a notice of appeal. *Savage v. Cache Valley Dairy Ass'n*, 737 F.2d 887, 889 (10th Cir. 1984).

In a civil case like this one, an appeal from a district court order must be filed within 30 days after its entry. 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). Accordingly, even assuming the district court's October 22, 2021 order were immediately appealable in the absence of a final judgment, Mr. Norton would have been required to file his notice of appeal on or before November 22, 2021. *See* Fed. R. App. P. 4(a)(1)(A) (notice of appeal in a civil case in which the United States is not a defendant "must be filed with the district clerk within 30 days after entry of the judgment or order appealed from"); Fed. R. App. P. 26(a)(1)(C) (stating that, if the last day of any time period specified in the Federal rules is a Saturday, Sunday, or legal holiday, "the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday").

The district court did not receive notice of Mr. Norton’s attempt to appeal the October 22, 2021 order until January 19, 2023—more than a year after it was due. As a result, “[t]he time limit has run and we are without jurisdiction” to review the October 22, 2021 order at this juncture. *See Jenkins v. Burtzloff*, 69 F.2d 460, 464 (10th Cir. 1995).

Second, except in limited circumstances that are not present here, this court’s appellate jurisdiction is limited to review of final decisions of the district court. *See* 28 U.S.C. § 1291; *see also United States v. Nixon*, 418 U.S. 683, 690-92 (1974) (“The finality requirement of 28 U.S.C. § 1291 embodies a strong congressional policy against piecemeal reviews, and against obstructing or impeding an ongoing judicial proceeding by interlocutory appeals.”). Mr. Norton’s motion to compel remains pending before the district court. Accordingly, there is no order for Mr. Norton to appeal at this time and his attempt to do so is premature.

APPEAL DISMISSED.

Entered for the Court

A handwritten signature in dark ink, appearing to read 'Christopher M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk