

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 1, 2024

Christopher M. Wolpert
Clerk of Court

JACK L. MILLER, III,

Plaintiff - Appellant,

v.

SERGEANT MEDINA; SERGEANT
LILES,

Defendants - Appellees.

No. 24-1129
(D.C. No. 1:21-CV-03436-GPG-SBP)
(D. Colo.)

ORDER

Before **HOLMES**, Chief Judge, **McHUGH**, and **ROSSMAN**, Circuit Judges.

Pro se plaintiff Jack L. Miller, III, appeals the district court's order granting the defendants' motion for summary judgment and separate judgment. The notice of appeal was filed after the deadline to file a notice of appeal expired. This court challenged whether we have jurisdiction to consider the appeal. Mr. Miller filed a Memorandum Brief in response. *See* 10th Cir. R. 27.3(B). Upon consideration of Mr. Miller's response, the district court record, and the applicable law, we conclude this court lacks jurisdiction to consider Mr. Miller's appeal.

"This court can exercise jurisdiction only if a notice of appeal is timely filed. 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). A notice of

appeal in a civil case like this one must be filed within 30 days after the district court's final judgment is entered. Fed. R. App. P. 4(a)(1)(A). Although Mr. Miller is proceeding pro se, he must comply with the same procedural requirements that govern all litigants. *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007); *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994).

In this case, the order and judgment being appealed were entered on the district court docket on February 13, 2024 (ECF Nos. 62 & 64). To be timely, the notice of appeal should have been filed by March 14, 2024. The notice of appeal was filed on March 28, 2024 (ECF No. 67), 14 days after the filing deadline expired.

Mr. Miller's Memorandum Brief filed in response to this court's order to show cause did not demonstrate that he timely filed the notice of appeal. Instead, Mr. Miller asked *this* court to reopen the time to appeal. But the United States Supreme Court has made clear this federal appellate court "has no authority to create equitable exceptions to jurisdictional requirements." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). His only potential avenue to obtain relief from the untimely notice of appeal was to seek such relief from the district court. 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(5), 4(a)(6). Mr. Miller did not file any post-judgment motions seeking relief from the untimely appeal in the district court, and the time within which he could have done so has expired. As a result, "[t]he time limit has run and we are without jurisdiction under the facts of this case." *Jenkins v. Burtzloff*, 69 F.3d 460, 464 (10th Cir. 1995).

APPEAL DISMISSED.

Entered for the Court

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

CHRISTOPHER M. WOLPERT, Clerk