

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 21, 2024

Christopher M. Wolpert
Clerk of Court

GRANT MITCHELL SAXENA,

Plaintiff - Appellant,

v.

MARY LOUISE HALL; DANIELLE
KAY KUNZE,

Defendants - Appellees.

No. 24-1165
(D.C. No. 1:22-CV-03060-DDD-SBP)
(D. Colo.)

ORDER

Before **BACHARACH**, **McHUGH**, and **FEDERICO**, Circuit Judges.

This appeal is before us sua sponte to consider the court’s jurisdiction over this appeal. *See Hill v. Vanderbilt Cap. Advisors, LLC*, 702 F.3d 1220, 1223 (10th Cir. 2012) (this court has “an independent duty to examine [its] own jurisdiction”).

The district court entered judgment against pro se appellant Grant Mitchell Saxena on February 22, 2024. Dr. Saxena did not file his notice of appeal until April 22, 2024, after the 30-day filing deadline had expired.

We entered a show cause order that required Dr. Saxena to explain why appellate jurisdiction was present in this appeal. We have before us Dr. Saxena’s response to that show cause order. Upon consideration of Dr. Saxena’s response, the district court docket,

and the applicable law, we conclude we lack jurisdiction for the reasons articulated below.

“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). In a civil case that does not include a federal actor as a party, a notice of appeal “must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(A); *see also* 28 U.S.C. § 2107(a). Although Dr. Saxena does not have an attorney, he must comply with the timeliness requirements in the procedural rules the same as any other litigant. *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994). In his response to the show cause order, Dr. Saxena argued that the court should excuse his late filing for a variety of equitable reasons. However, the court does not have the authority to extend the time for Dr. Saxena to file his notice of appeal. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007) (no authority to create equitable exceptions to jurisdictional time limit applicable to notice of appeal in a civil case); *see also Alva v. Teen Help*, 469 F.3d 946, 950 (10th Cir. 2006) (only the district court can extend the time to file a notice of appeal, and only under limited circumstances).

Here, the district court’s final judgment was entered February 22, 2024. To be timely, the notice of appeal had to be filed in the district court by Monday, March 25, 2024. *See* Fed. R. App. P. 26(a)(1)(C) (if the last day of a prescribed time period falls on a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next business day). Dr. Saxena did not file the notice of appeal until April 22, 2024, after the deadline to appeal the judgment passed. This court has no authority to ignore the

jurisdictional requirement to file a timely notice of appeal. *Bowles*, 551 U.S. at 214. So, “[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. M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk