

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

December 22, 2025

Christopher M. Wolpert
Clerk of Court

JASON J. NICHOLSON,

Plaintiff - Appellant,

v.

SCOTT BESSENT, Secretary of the
Treasury; INTERNAL REVENUE
SERVICE,

Defendants - Appellees.

No. 25-4142
(D.C. No. 1:25-CV-00049-AMA)
(D. Utah)

ORDER AND JUDGMENT*

Before **FEDERICO, BALDOCK**, and **MURPHY**, Circuit Judges.

After examining the appellant's brief and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Jason Nicholson appeals from an order of the district court dismissing his action with prejudice as untimely. *See* R. at 27 n.5 (citing 29 C.F.R. § 1614.310(d)).

In so doing, the district court denied Nicholson's request to equitably toll the

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

limitations period based on a whistleblower claim Nicholson filed in the United States District Court for the District of Utah. R. at 28 (identifying that prior case as 1:24-cv-00090). The district court concluded Nicholson could not use 1:24-cv-00090 to toll the limitations period in the instant action because 1:24-cv-00090 was also untimely filed. R. at 28. Nicholson appeals.

This court exercises appellate jurisdiction pursuant to 28 U.S.C. § 1291. This court reviews the district court's interpretation of 29 C.F.R. § 1614.310(d), including its timeliness requirement, *de novo*. *See Harms v. I.R.S.*, 321 F.3d 1001, 1009 (10th Cir. 2003). The district court's refusal to apply equitable tolling is reviewed for abuse of discretion. *Garrett v. Fleming*, 362 F.3d 692, 695 (10th Cir. 2004).

In his brief on appeal, Nicholson does not argue that the district court erred as to any of its calculations of when the applicable limitations period expired. Instead, he asserts the district court erred in concluding 1:24-cv-00090 was not timely filed. According to Nicholson, he previously sent to the district court a “copy of postmark showing that it was timely filed.” Appellant's Opening Br. at 2. The problem for Nicholson is two-fold. First, the document he identifies was attached to a misdirected notice of appeal filed in this court. R. at 32-34. Although this court redirected the misdirected notice of appeal to the district court pursuant to Fed. R. App. P. 4(d), Nicholson has not identified any authority indicating the district court erred in declining to consider materials attached to a notice of appeal. Second, and more fundamentally, Nicholson has not identified any authority indicating a mailbox rule applies to non-prisoners. Indeed, “a large body of . . . authority has rejected the

general argument that a notice of appeal is ‘filed’ at the moment it is placed in the mail addressed to the clerk of the court-this on the ground that *receipt* by the district court is required.” *Houston v. Lack*, 487 U.S. 266, 274 (1988) (adopting a mailbox rule in the context of prisoner filings, but noting such rule does not “disturb” the general rule that receipt by the district court is required in civil cases to count as filing). As the district court correctly noted, the complaint he filed in 1:24-cv-00090 was received by the Clerk of the United States District Court for the District of Utah on May 29, 2024, well past the May 1, 2024, deadline set out in § 1614.310(d). R. at 28. Because 1:24-cv-00090 was not timely filed, the district court did not abuse its discretion in concluding that case could not serve as a basis to equitably toll the § 1614.310(d) limitations period in this case.

For those reasons set out above, the order of the United States District Court for the District of Utah dismissing Nicholson’s action with prejudice is hereby **AFFIRMED.**

Entered for the Court

Michael R. Murphy
Circuit Judge