

United States Court of Appeals for the Fifth Circuit

No. 22-10791
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 21, 2023

Lyle W. Cayce
Clerk

DANIEL D. DILLARD,

Plaintiff—Appellee,

versus

LORIE DAVIS, *Former Director, Texas Department of Criminal Justice*;
JIMMY S. SMITH, *Senior Warden*; ANDREA B. LOZADA, *Former*
Assistant Warden; ELBERT G. HOLMES, *Former Assistant Warden*;
CODY S. MILLER, *Captain*; BRYAN D. REITSMA, *Former Captain*;
SHON MCGEE, *Lieutenant*; GREGORY S. FREDRICKS; DAKOTA R.
DENNEY; JAYTON W. CHAVERS; JAMES BULLARD; TIMOTHY
WASHINGTON, *Major*; BOBBY LUMPKIN, *Director, Texas Department of*
Criminal Justice, Correctional Institutions Division,

Defendants—Appellants.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:19-CV-81

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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Daniel D. Dillard, Texas prisoner # 1400285, filed a 42 U.S.C. § 1983 suit challenging a prison disciplinary conviction and his prolonged confinement in restrictive housing. The district court denied Dillard's motion for partial summary judgment, granted the defendants' motion for summary judgment as to several claims, denied the defendants' motion for summary judgment based on qualified immunity and *Heck v. Humphrey*, 512 U.S. 477 (1994), and entered a partial final judgment. Dillard and the defendants appealed the district court's order and judgment. Dillard also filed a postjudgment motion for reconsideration in accordance with Federal Rule of Civil Procedure 59(e). Dillard subsequently moved to dismiss his appeal to allow the district court to rule on his pending motion for reconsideration. We granted the motion. Dillard now moves to remand the case to the district court and dismiss the defendants' appeal for lack of jurisdiction due to the pending motion for reconsideration.

A timely "notice of appeal in a civil case is a jurisdictional requirement." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Here, Dillard filed a motion for reconsideration which challenged the correctness of the district court's order and partial final judgment. *See* FED. R. CIV. P. 59(e). Such a pleading is commonly construed as a Rule 59(e) motion if, as here, it was filed within the applicable 28-day time limit. *See Mangieri v. Clifton*, 29 F.3d 1012, 1015 n.5 (5th Cir. 1994) (applying the former 10-day time limit for filing a Rule 59(e) motion).

Under Federal Rule of Appellate Procedure 4, the filing of certain postjudgment motions, including a timely Rule 59(e) motion, renders a notice of appeal ineffective until an order is entered disposing of the motion. FED. R. APP. P. 4(a)(4)(A)(iv), (B)(i); *see also Simmons v. Reliance Standard Life Ins. Co. of Tex.*, 310 F.3d 865, 868 (5th Cir. 2002). Because the district court has not ruled on Dillard's Rule 59(e) motion, the defendants' notice of appeal is not yet effective, and this appeal is premature. *See* FED.

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R. APP. P. 4(a)(4)(B)(i); *Burt v. Ware*, 14 F.3d 256, 260-61 (5th Cir. 1994). Accordingly, Dillard's motion to remand is GRANTED, and this case is REMANDED for the limited purpose of allowing the district court to rule on the Rule 59(e) motion. We hold the appeal in abeyance until the notice of appeal becomes effective, and we retain jurisdiction over the appeal except for the purposes of the limited remand. The clerk of this court is instructed to process the appeal immediately upon the return of the case from the district court.

MOTION GRANTED; LIMITED REMAND; APPEAL
HELD IN ABEYANCE.