

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

FEB 28 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROBERT HILL,

Plaintiff-Appellant,

v.

KATE MARTIN, in her personal capacity,

Defendant,

and

DAVE JASSEN, in his personal and official  
capacity; et al.,

Defendants-Appellees.

No. 18-35730

D.C. No. 3:17-cv-05586-RBL  
Western District of Washington,  
Tacoma

ORDER

Before: CANBY, GRABER, and McKEOWN, Circuit Judges.

A review of the record and the parties' responses to this court's September 5, 2018 order to show cause demonstrates that this court lacks jurisdiction over this appeal because the notice of appeal, served on August 19, 2018 and filed on August 23, 2018, was not filed or delivered to prison officials within 30 days after the district court's judgment entered on May 2, 2018. *See* 28 U.S.C. § 2107(a); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional); *see also Bowles v. Russell*, 551 U.S. 205 (2007)

(court lacks authority to create equitable exceptions to jurisdictional requirement of timely notice of appeal).

Accordingly, appellees' motion to dismiss this appeal for lack of jurisdiction (Docket Entry No. 13) is granted.

**DISMISSED.**

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ORDER

The district court's judgment was entered on the docket on May 2, 2018. Appellant's notice of appeal was delivered to prison officials on August 19, 2018, and received by the district court on August 23, 2018. Accordingly, the record suggests that this court may lack jurisdiction over this appeal because the notice of appeal was not filed or delivered to prison officials within 30 days after entry of the district court's judgment. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 4(c); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional); *Houston v. Lack*, 487 U.S. 266, 270

(1988) (notice of appeal deemed filed when it was delivered to prison authorities for forwarding to the court).

Within 21 days after the date of this order, appellant shall move for voluntary dismissal of the appeal, or show cause why it should not be dismissed for lack of jurisdiction. If appellant elects to show cause, a response may be filed within 10 days after service of the memorandum.

If appellant does not comply with this order, the Clerk shall dismiss this appeal pursuant to Ninth Circuit Rule 42-1.

Briefing is suspended pending further order of the court.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Corina Orozco  
Deputy Clerk  
Ninth Circuit Rule 27-7

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

ROBERT HILL,

Plaintiff,

v.

CASE NUMBER: C17-5586RBL

JUDGMENT IN A CIVIL CASE

KATE MARTIN, et al.,

Defendants.

       Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.


  X   Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

THE COURT HAS ORDERED THAT Defendant's Motion to Dismiss Dkt [17] is GRANTED. This matter is DISMISSED.

May 2, 2018

WILLIAM M. McCOOL

CLERK



Deputy Clerk

APPENDIX 'D'

16.

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBERT HILL,

Plaintiff,

v.

KATE MARTIN, et al,

Defendants.

CASE NO. C17-5586 RBL

ORDER GRANTING MOTION TO  
DISMISS

THIS MATTER is before the Court on Defendants' Motion to Dismiss [Dkt. # 17], and on Plaintiff Hill's "motion for extension of time to file response to show cause" [Dkt. # 24]. There is no "Order to Show Cause" in this case, and the request appears to have been mistakenly filed here. Even if it was intentional, Hill's Motion is DENIED.

Hill has not filed any other Response to the Motion to Dismiss.

Hill's initial complaint named a different set of defendants (related to the Tacoma News Tribune), and complained about a different set of facts (related to articles naming Hill). It appears Hill intended to file that complaint in Pierce County.

APPENDIX 'C'

1 Hill then filed an amended<sup>1</sup> complaint [Dkt. # 5], naming three new defendants (Janssen,  
2 Hetzel, and Fitzwater, all employees of the Kitsap County Sherriff's department), asserting  
3 §1983 claims arising from an incident<sup>2</sup> at the jail where Hill is or at least was incarcerated.

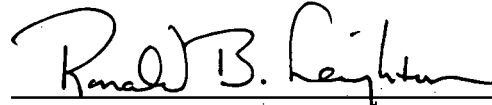
4 The current defendants argue, persuasively, that Hill's effort to completely transform the  
5 nature of his case is improper. The Court also notes that the claim itself appears to be frivolous.

6 Under LCR 7(b), a party's failure to respond to a motion "may be considered by the court  
7 as an admission that the motion has merit."

8 The Defendants' motion does have merit, and it is GRANTED. This matter is  
9 DISMISSED.

10 IT IS SO ORDERED.

11 Dated this 1<sup>st</sup> day of May, 2018.

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14 Ronald B. Leighton  
United States District Judge

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22 <sup>1</sup> Hill has filed a "proposed second amended complaint" but he has not sought leave to amend.

23 <sup>2</sup> Hill claims that after an adverse ruling at an in-prison legal hearing, he had a "verbal outburst  
24 including a loud banshee scream." He claims the three named defendants then "pulled his hair, causing him pain." Dkt. # 5 at 7.

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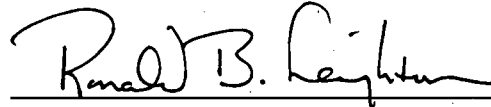
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HONORABLE RONALD B. LEIGHTON

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