

FILED: May 22, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1105
(1:19-cv-00689-TDS-LPA)

DERRICK ALLEN

Plaintiff - Appellant

v.

TED WIRE; ERIK MCCONCHIE, General Manager; WILL AUSTIN, Kitchen Manager; DAVE SIGUMUND, Kitchen Manager; CASEY HUMPHRIES

Defendants - Appellees

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-1105

DERRICK ALLEN,

Plaintiff - Appellant,

v.

TED WIRE; ERIK MCCONCHIE, General Manager; WILL AUSTIN, Kitchen Manager; DAVE SIGUMUND, Kitchen Manager; CASEY HUMPHRIES,

Defendants - Appellees.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, Chief District Judge. (1:19-cv-00689-TDS-LPA)

Submitted: April 14, 2020

Decided: April 17, 2020

Before WILKINSON, QUATTLEBAUM, and RUSHING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Derrick Michael Allen, Sr., Appellant Pro Se. Asa Covington Edwards, IV, MAGINNIS LAW, PLLC, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Derrick Allen has noted an appeal in the civil action he filed in the district court. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2018), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2018); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). Because the district court has not entered a final order or an appealable interlocutory or collateral order, this appeal is interlocutory. Accordingly, we deny Allen's motion to appoint counsel and dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILE,SO30

**U.S. District Court
North Carolina Middle District (NCMD)
CIVIL DOCKET FOR CASE #: 1:19-cv-00689-TDS-LPA**

ALLEN v. WIRE, et al.

Assigned to: CHIEF JUDGE THOMAS D. SCHROEDER

Referred to: MAG/JUDGE L. PATRICK AULD

Case in other court: USCA, 20-01105

Cause: 42:1981 Civil Rights

Date Filed: 07/12/2019

Jury Demand: Plaintiff

Nature of Suit: 442 Civil Rights: Jobs

Jurisdiction: Federal Question

Plaintiff

DERRICK ALLEN

represented by **DERRICK ALLEN**
P.O. BOX 51368
DURHAM, NC 27717-1368
919-450-7497
Email: 78derrickallen@gmail.com
PRO SE

V.

Defendant

TED WIRE

represented by **ASA C. EDWARDS , IV**
MAGINNIS LAW, PLLC
4801 GLENWOOD AVE., STE. 310
RALEIGH, NC 27612
919-526-0450
Fax: 919-882-8763
Email: aedwards@magginnislaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

ERIK MCCONCHIE
GENERAL MANAGER

represented by **ASA C. EDWARDS , IV**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

WILL AUSTIN
KITCHEN MANAGER

represented by **ASA C. EDWARDS , IV**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

DAVE SIGUMUND
KITCHEN MANAGER

represented by **ASA C. EDWARDS , IV**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

CASEY HUMPHRIES

represented by **ASA C. EDWARDS , IV**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/12/2019	<u>1</u>	APPLICATION to Proceed IFP by DERRICK ALLEN. (Coyne, Michelle) (Entered: 07/12/2019)
07/12/2019	<u>2</u>	COMPLAINT against All Defendants, filed by DERRICK ALLEN.(Coyne, Michelle) (Entered: 07/12/2019)
07/12/2019	<u>3</u>	CIVIL COVER SHEET. (Coyne, Michelle) (Entered: 07/12/2019)
07/15/2019		Case REASSIGNED to UNASSIGNED and MAGISTRATE JUDGE L. PATRICK AULD. (Coyne, Michelle) (Entered: 07/15/2019)
07/15/2019		CASE REFERRED to Standing Order 30. (Coyne, Michelle) (Entered: 07/15/2019)
07/15/2019		Motion Referred to Magistrate Judge L. Patrick Auld Re: <u>1</u> APPLICATION to Proceed IFP. (Coyne, Michelle) (Entered: 07/15/2019)
07/19/2019	<u>4</u>	ORDER signed by Magistrate Judge L. Patrick Auld on 07/19/2019, that Plaintiff is permitted to commence said proceeding in this court without prepayment of fees or costs, or giving security therefor. Plaintiff is responsible for preparing and delivering to the Clerk, the correct summons for service on each defendant. Failure to prepare and deliver said summons within 15 days from the filing of this order shall result in this case being dismissed without further notice. The U.S. Marshal shall serve the summons and complaint upon defendant. (Coyne, Michelle) (Entered: 07/19/2019)
07/22/2019	<u>5</u>	Summons Issued as to WILL AUSTIN, CASEY HUMPHRIES, ERIK MCCONCHIE, DAVE SIGUMUND, TED WIRE. (Coyne, Michelle) (Entered: 07/22/2019)
07/22/2019	<u>6</u>	Notice of Right to Consent. Plaintiff shall serve the attached form on all parties. (Attachments: # <u>1</u> Consent Form)(Coyne, Michelle) (Entered: 07/22/2019)
08/12/2019	<u>8</u>	USMS Return Executed for Complaint, Summons, NTC as to all Defendants. (Attachments: # <u>1</u> Austin, # <u>2</u> Sigmund, # <u>3</u> Wire, # <u>4</u> McConchie)(Coyne, Michelle) (Entered: 08/12/2019)

08/19/2019	<u>9</u>	First MOTION for Extension of Time to File Answer re <u>2</u> Complaint by WILL AUSTIN, CASEY HUMPHRIES, ERIK MCCONCHIE, DAVE SIGUMUND, TED WIRE. (Attachments: # <u>1</u> Text of Proposed Order Exhibit A: Proposed Order)(EDWARDS, ASA) (Entered: 08/19/2019)
08/19/2019	<u>10</u>	NOTICE of Appearance by attorney ASA C. EDWARDS, IV on behalf of Defendants WILL AUSTIN, CASEY HUMPHRIES, ERIK MCCONCHIE, DAVE SIGUMUND, TED WIRE (EDWARDS, ASA) (Entered: 08/19/2019)
08/20/2019		Motions Referred: RE: <u>9</u> First MOTION for Extension of Time to File Answer re <u>2</u> Complaint , to MAG/JUDGE L. PATRICK AULD (Garrett, Kim) (Entered: 08/20/2019)
08/20/2019	<u>11</u>	RESPONSE in Opposition re <u>9</u> First MOTION for Extension of Time to File Answer re <u>2</u> Complaint filed by CASEY HUMPHRIES, DAVE SIGUMUND, ERIK MCCONCHIE, TED WIRE, WILL AUSTIN, filed by DERRICK ALLEN. Replies due by 9/6/2019. (Butler, Carol) (Entered: 08/20/2019)
08/21/2019		TEXT ORDER granting <u>9</u> First Motion for Extension of Time. Defendants shall answer or otherwise respond by 09/18/2019. In <u>9</u> First Motion, counsel for Defendants represented as an officer of the Court that he "requires additional time to investigate the allegations in Plaintiff's Complaint and to prepare responsive filings." Plaintiff filed <u>11</u> Response opposing <u>9</u> First Motion, but did not offer any reason for the Court to doubt the representation made by counsel for Defendants in <u>9</u> First Motion or to deny the reasonable request in <u>9</u> First Motion; instead, <u>11</u> Response simply states that Plaintiff is "not in agreement with the extension of time requested by Defendant(s) [sic] counsel." Under these circumstances, the Court finds good cause under Federal Rule of Civil Procedure 6(b)(1)(A) for the requested extension of time. The Court encourages Plaintiff to avoid the impulse to oppose any request made by Defendants simply because it comes from Defendants and to instead think critically about whether legitimate grounds exist to oppose a request. The Court expects Defendants to do the same in connection with any requests made by Plaintiff. Issued by MAG/JUDGE L. PATRICK AULD on 08/21/2019. (AULD, L.) (Entered: 08/21/2019)
09/09/2019	<u>12</u>	Notice to Parties RE: SO30. Responses due by 10/9/2019 (Winchester, Robin) (Entered: 09/09/2019)
09/18/2019	<u>13</u>	First MOTION to Dismiss by WILL AUSTIN, CASEY HUMPHRIES, ERIK MCCONCHIE, DAVE SIGUMUND, TED WIRE. Response to Motion due by 10/15/2019 (Attachments: # <u>1</u> Exhibit Exhibit A: Wallace v. Greystar, # <u>2</u> Exhibit Exhibit B: El-Bey v. North Carolina, # <u>3</u> Exhibit Exhibit C: Emory Utilities v. TWC)(EDWARDS, ASA) (Entered: 09/18/2019)
09/18/2019	<u>14</u>	MEMORANDUM filed by Defendants WILL AUSTIN, CASEY HUMPHRIES, ERIK MCCONCHIE, DAVE SIGUMUND, TED WIRE re <u>13</u> First MOTION to Dismiss filed by WILL AUSTIN, CASEY HUMPHRIES, ERIK MCCONCHIE, DAVE SIGUMUND, TED WIRE. (EDWARDS, ASA) (Entered: 09/18/2019)
09/19/2019	<u>15</u>	Roseboro Letter as to Motion to Dismiss <u>13</u> . (Coyne, Michelle) (Entered: 09/19/2019)

10/01/2019	<u>16</u>	RESPONSE in Opposition to <u>13</u> First MOTION to Dismiss filed by CASEY HUMPHRIES, DAVE SIGUMUND, ERIK MCCONCHIE, TED WIRE, WILL AUSTIN filed by DERRICK ALLEN. Replies due by 10/18/2019. (Coyne, Michelle) (Entered: 10/01/2019)
10/01/2019	<u>17</u>	AFFIDAVIT of DERRICK ALLEN in Response to <u>13</u> First MOTION to Dismiss filed by Plaintiff DERRICK ALLEN. (Coyne, Michelle) (Entered: 10/01/2019)
10/22/2019		Motions Referred: RE: <u>13</u> First MOTION to Dismiss , to MAG/JUDGE L. PATRICK AULD (Garrett, Kim) (Entered: 10/22/2019)
11/19/2019		Case Reassigned to JUDGE WILLIAM L. OSTEEN, JR. UNASSIGNED no longer assigned to the case. (Powell, Gloria) (Entered: 11/19/2019)
01/13/2020		Case Reassigned to CHIEF JUDGE THOMAS D. SCHROEDER. JUDGE WILLIAM L. OSTEEN, JR no longer assigned to the case. (Marsh, Keah) (Entered: 01/13/2020)
01/16/2020	<u>18</u>	NOTICE of Change of Address by DERRICK ALLEN, #10973, Durham County Jail, POB 771, DURHAM, NC 27701. (Attachments: # <u>1</u> Envelope - Front and Back) (Daniel, J) (Entered: 01/22/2020)
01/27/2020	<u>20</u>	PREMATURE NOTICE OF APPEAL filed by DERRICK ALLEN. (Butler, Carol) (Additional attachment(s) added on 1/28/2020: # <u>1</u> Envelope - Front and Back) (Butler, Carol). (Entered: 01/28/2020)
01/28/2020	<u>19</u>	NOTICE of Change of Address back to P.O. BOX 25419, DURHAM, NC 27702, filed by DERRICK ALLEN. (Sheets, Jamie) (Entered: 01/28/2020)
01/29/2020	<u>21</u>	Electronic Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>20</u> Notice of Appeal (Butler, Carol) (Entered: 01/29/2020)
01/30/2020	<u>22</u>	NOTICE of Docketing Appeal from USCA re <u>20</u> Notice of Appeal filed by DERRICK ALLEN. USCA Case Number 20-1105. USCA Case Manager: Kirsten Hancock. (Hicks, Samantha) (Entered: 01/30/2020)
01/30/2020		Assembled Electronic Record Transmitted to Fourth Circuit to US Court of Appeals re <u>20</u> Notice of Appeal. USCA Case Number 20-1105. (Hicks, Samantha) (Entered: 01/30/2020)
03/24/2020	<u>23</u>	NOTICE of Change of Address by DERRICK ALLEN. (Attachments: # <u>1</u> Envelope - Front and Back) (Sheets, Jamie) (Entered: 03/24/2020)
04/06/2020	<u>24</u>	Notice of Signed Pro Se Electronic Service Consent by DERRICK ALLEN. Email address: 78derrickallen@gmail.com. (Attachments: # <u>1</u> Envelope - Front and Back) (Hicks, Samantha) (Entered: 04/06/2020)
04/17/2020	<u>25</u>	USCA OPINION: Dismissed by unpublished per curiam opinion. USCA No. 20-1105. (Hicks, Samantha) (Entered: 04/17/2020)
04/17/2020	<u>26</u>	USCA JUDGMENT as to <u>20</u> Notice of Appeal filed by DERRICK ALLEN - In accordance with the decision of this court, this appeal is dismissed. This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41. (Hicks, Samantha) (Entered: 04/17/2020)

04/20/2020	<u>27</u>	MOTION Requesting to be Allowed to File Electronically by DERRICK ALLEN. (Attachments: # <u>1</u> Envelope - Front and Back) (Hicks, Samantha) (Entered: 04/20/2020)
04/20/2020		Motion Referred to MAGISTRATE JUDGE L. PATRICK AULD RE: <u>27</u> MOTION Requesting to be Allowed to File Electronically. (Engle, Anita) (Entered: 04/20/2020)
04/20/2020	<u>28</u>	STAY OF MANDATE UNDER FED. R. APP. P. 41(d)(1) as to <u>20</u> Notice of Appeal filed by DERRICK ALLEN Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41 (d)(1), the mandate is stayed pending further order of this court. (Hicks, Samantha) (Entered: 04/20/2020)
05/22/2020	<u>29</u>	USCA ORDER. The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc. USCA No. 20-1105. (Hicks, Samantha) (Entered: 05/22/2020)
06/01/2020	<u>30</u>	MANDATE of USCA as to <u>20</u> Notice of Appeal filed by DERRICK ALLEN: The judgment of this court, entered April 17, 2020, takes effect today. This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. USCA Case No. 20-1105. (Hicks, Samantha) (Entered: 06/01/2020)

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