

Attachment #1

United States Court of Appeals
for the Fifth Circuit

No. 21-20066
Summary Calendar

United States Court of Appeals

Fifth Circuit

FILED

August 13, 2021

Lyle W. Cayce
Clerk

MICHEL THOMAS.

Plaintiff—Appellant,

versus

STAFFLINK, INC., *doing business as*, LINK STAFFING SERVICES;
BILL PITTS; KAREN PITTS; MARIO TAMEZ; MATT TRIMBLE;
CHRISTINE O'BRIEN; LINK STAFFING MANAGEMENT, L.L.C.,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-3902

Before SOUTHWICK, OLDHAM, and WILSON, *Circuit Judges.*

PER CURIAM:*

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

Michel Thomas, acting *pro se*, filed an employment discrimination lawsuit against the Defendants. The district court dismissed some of his claims and granted summary judgment on others. We AFFIRM.

We first examine our jurisdiction. On August 4, 2020, the district court entered final judgment against Thomas. On August 31, 2020, Thomas filed a “motion to dismiss” under Federal Rules of Civil Procedure 60(b)(3), 60(b)(4), and 60(b)(6), arguing that the final judgment was void because it was inconsistent with due process.

On November 9, 2020, the district court denied the motion to dismiss and re-entered final judgment. On December 4, 2020, Thomas filed another “motion to dismiss” under Rules 60(b)(3), 60(b)(4), and 60(b)(6). Like his first motion, the second post-judgment motion argued that the final judgment was void because it was inconsistent with due process. The district court denied Thomas’s second post-judgment motion on January 4, 2021. Thomas filed his notice of appeal on February 2, 2021.

Generally, a party must file a notice of appeal “within 30 days after entry of the judgment or order appealed from.” FED. R. APP. P. 4(a)(1)(A). Certain timely filed post-judgment motions, including a motion under Rule 60(b), interrupt the time for filing the notice of appeal. *See* FED. R. APP. P. 4(a)(4)(A). An appellant generally can take advantage of this interruption only once. We have explained that successive post-judgment motions are “condemned by well-established authority in this and other circuits.” *Charles L.M. v. N.E. Indep. Sch. Dist.*, 884 F.2d 869, 870 (5th Cir. 1989). As a result, “where an appellant files a second motion to reconsider ‘based upon substantially the same grounds as urged in the earlier motion,’ the filing of the second motion does not interrupt the running of the time for appeal.” *Id.* (quoting *Ellis v. Richardson*, 471 F.2d 720, 721 (5th Cir. 1973)).

Here, Thomas's first Rule 60(b) motion was timely filed and interrupted the deadline for filing a notice of appeal. *See FED. R. APP. P. 4(a)(4)(A)*. Thomas's second Rule 60(b) motion was based on substantially similar grounds and therefore did not interrupt the time for filing a notice of appeal. The 30-day time for appeal ran from the district court's denial of his first Rule 60(b) motion. Since Thomas did not file his notice of appeal within 30 days of that denial, we have no jurisdiction to review the final judgment entered in this case.

Because Thomas's notice of appeal was filed within 30 days of the court's denial of his second Rule 60(b) motion, we may review the court's decision on that motion. We review the denial of a Rule 60(b) motion for abuse of discretion. *Wilson v. Johns-Manville Sales Corp.*, 873 F.2d 869, 871 (5th Cir. 1989).

After a review of the record and briefs, we conclude that the district court did not abuse its discretion by denying Thomas's second Rule 60(b) motion. Thomas's motion principally makes arguments that he made or could have made earlier in the proceedings. He argues that the district court colluded with the defendants but provides no evidence in support of his claim. He otherwise offers no "extraordinary circumstances" to justify relief. *See Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743, 748 (5th Cir. 1995).

AFFIRMED.

The judgment entered provides that appellant pay to appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk



By: Whitney M. Jett, Deputy Clerk

Enclosure(s)

Ms. Elizabeth L. Bolt
Mr. Allan Huddleston Neighbors
Mr. Michel Thomas

Attachment # 2

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 10, 2021

Mr. Michel Thomas
1127 Eldridge Parkway
Suite 300-167
Houston, TX 77077

No. 21-20066 Thomas v. Stafflink
USDC No. 4:17-CV-3902

Dear Mr. Thomas,

We will take no action on your petition for rehearing. The time for filing a petition for rehearing under FED. R. APP. P. 40 has expired and the mandate has issued.

Sincerely,

LYLE W. CAYCE, Clerk

Rebecca L. Leto

By: Rebecca L. Leto, Deputy Clerk
504-310-7703

cc: Ms. Elizabeth L. Bolt
Mr. Allan Huddleston Neighbors

Attachment # 3

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 05, 2021

Mr. Michel Thomas
1127 Eldridge Parkway
Suite 300-167
Houston, TX 77077

No. 21-20066 Thomas v. Stafflink
USDC No. 4:17-CV-3902

Dear Mr. Thomas,

We received your motion for reconsideration of no action taken on your petition for panel rehearing. Pursuant to 5th Circuit Rule 26.1, additional 3 days after service does not apply to such matters as petitions for rehearings under Fed. R. App. P. 40. Accordingly, we are taking no action on this motion.

Sincerely,

LYLE W. CAYCE, Clerk

Rebecca L. Leto

By:
Rebecca L. Leto, Deputy Clerk
504-310-7703

cc: Ms. Elizabeth L. Bolt
Mr. Allan Huddleston Neighbors

Attachment #4

United States Court of Appeals for the Fifth Circuit

ORDER General Docket No. 2021-8

Hurricane Ida caused catastrophic damage to dwellings, businesses, and infrastructure in the New Orleans area, forcing the closure of the court. In advance of the storm, General Order No. 2021-7 extended for 7 days deadlines for pleadings.

As conditions require, the court hereby extends pending deadlines for pleadings and briefs by an additional 7 days, EXCEPT in cases previously designated for expedited briefing, or filings due cases scheduled for September En Banc hearings.

This order does not extend the time to file a notice of appeal or petition for review (see FEDERAL RULE OF APPELLATE PROCEDURE 26(B)) as the time for filing an appeal in a civil case is mandatory and jurisdictional.

Despite the closure of the courthouse and Clerk's Office, employees who evacuated are teleworking, handling both emergency and routine matters.

Dated this 2nd day of September 2021.

Lyle W. Cayce

LYLE W. CAYCE
Clerk of Court

By DIRECTION

Attachment # 5