IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-13106-C

JOHNNY BRETT GREGORY,

Plaintiff - Appellant,

versus

UNITED STATES PROBATION OFFICE,
Counter Terrorism Unit (CTU) Agency,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

Before: ROSENBAUM and GRANT, Circuit Judges.

BY THE COURT:

Johnny Gregory has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2 and 22-1(c), of this Court's February 10, 2022 order, denying his motions for leave to proceed *in forma pauperis* ("IFP"), "failure to comply with the rules," and enforcement of a judgment for $20,778 under the All Writs Act, and dismissing the appeal. Upon review, Gregory's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

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Before: ROSENBAUM and GRANT, Circuit Judges.

BY THE COURT:

Upon our review of the record and the responses to the jurisdictional question, this appeal is DISMISSED. To the extent Johnny Gregory seeks to appeal from the district court's February 18, 2021, order and judgment dismissing his civil complaint as frivolous and placing a filing restriction against him in N.D. Ga. No. 4:21-cv-00035-TWT, his notice of appeal—filed on September 1, 2021—is untimely. *See* Fed. R. App. P. 4(a)(1)(A) (providing that a notice of appeal in a civil case is timely if it is filed within 30 days after entry of the judgment or order appealed from); Fed. R. App. P. 4(a)(4)(A)(vi) (providing that, if a party files in the district court, *inter alia*, a motion for relief under Fed. R. Civ. P. 60 no later than 28 days after the order or judgment is entered, the time to file an appeal runs from the entry of the order disposing of the last such

remaining motion); *Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300 (11th Cir. 2010) (explaining that the timely filing of a notice of appeal in a civil case is a jurisdictional requirement).

Further, to the extent Gregory seeks to appeal from the district court's September 29, 2021, order denying him leave to proceed *in forma pauperis* ("IFP") on appeal, his appeal is procedurally improper. *See* Fed. R. App. P. 24(a)(5) & advisory committee notes (1967) (stating that the rule concerning IFP "establishes a subsequent motion in the court of appeals, rather than an appeal . . . as the proper procedure for calling in question the correctness of the action of the district court"); *Gomez v. United States*, 245 F.2d 346, 347 (5th Cir. 1957) (indicating that the correct procedure is to renew the motion in the appellate court).

As for Gregory's attempt to appeal from the district court's August 24, 2021, remark and subsequent oral order in 4:21-mi-00003-TWT, as a mere continuation of the prior proceedings in which the court entered its filing restriction, the remark and oral order are not final and appealable under 28 U.S.C. § 1291 because they constitute a post-judgment enforcement of an injunction without contempt or sanctions. *See Mamma Mia's Trattoria, Inc. v. Original Brooklyn Water Bagel Co.*, 758 F.3d 1320, 1324–25 (11th Cir. 2014). Nor are the remark and oral order appealable under 28 U.S.C. § 1292(a)(1). *See* 28 U.S.C. § 1292(a)(1) (providing courts of appeal with jurisdiction over interlocutory orders of the district courts granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions); *Mamma Mia's Trattoria, Inc.*, 768 F.3d at 1326–27 (explaining that under § 1292(a)(1), this Court may review an order that modifies a previously entered injunction, that an order clarifying or interpreting an existing injunction is not appealable, that an order modifies rather than clarifies an existing injunction when it actually changes the legal relationship of the parties, and that an order that interprets an injunction changes the legal relationship of the parties only when it blatantly

misinterprets the injunction). Rather, to the extent that Gregory seeks to require the district court to reverse its screening determination made pursuant to a previously issued filing restriction, such a claim may be brought only as a petition to this Court for a writ of mandamus. But even if we construe Gregory's appeal as a petition for mandamus, mandamus is not warranted here because Gregory has not shown that his right to issuance of the writ is clear and indisputable and that the writ is appropriate on this record. *See Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380–81 (2004).

Concerning Gregory's motion for leave to proceed *in forma pauperis* ("IFP") on appeal, the motion is DENIED because the record reveals that the appeal is frivolous. *See Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002), *overruled on other grounds by Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021) (*en banc*). Furthermore, his motion seeking to invoke the All Writs Act, 28 U.S.C. § 1651(a), to have this Court impose a judgment of $20,778.00 is DENIED because the 2012 state court judgment is not a proceeding subject to this Court's appellate review. *See Rohe v. Wells Fargo Bank, N.A.*, 988 F.3d 1256, 1264 (11th Cir. 2021). Lastly, because his "motion for failure to comply with the rules" makes no argument seeking relief or action from this Court, it is DENIED as moot.