

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 22-14017-J

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ZACHARY JAMES MCALEXANDER,

Plaintiff-Appellant,

versus

D.G. YUENGLING & SON, INCORPORATED,  
RED BULL DISTRIBUTION COMPANY, INC.,  
LIVING ESSENTIALS, LLC,

Defendants-Appellees.

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

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Before: JORDAN, JILL PRYOR, and GRANT, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. The statutory time limit required that Appellant file a notice of appeal on or before October 14, 2022, which was 30 days after the entry of the appealed-from order on September 14, 2022. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 26(a)(1)(C). However, the instant notice of appeal was filed on November 23, 2022—40 days after the deadline to file a notice of appeal. *See Hatchell v. Heckler*, 708 F.2d 578, 579-80 (11th Cir. 1983) (providing that a notice of appeal that is mailed to the district court is deemed filed on the date that it is received by the district court). Thus, the notice of appeal is untimely and cannot invoke our appellate jurisdiction. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A); *Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300 (11th Cir. 2010) (noting

that, in a civil case, the statutory time limit for filing a notice of appeal is a jurisdictional requirement).

Additionally, there is no basis for relief under Federal Rules of Appellate Procedure 4(a)(5) or 4(a)(6) because Appellant failed to file a timely Rule 4(a)(5) motion and he neither alleges, nor does the record otherwise indicate, that he did not receive notice of the entry of the appealed-from order within 21 days of its entry. *See* 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(5)-(6); *Sanders v. United States*, 113 F.3d 184, 186-87 (11th Cir. 1997) (explaining that we may construe a late *pro se* notice of appeal in a civil case as a motion to reopen the appeal period under Rule 4(a)(6) if there is an indication that the appellant did not receive notice of the entry of an order or judgment within 21 days of its entry); *Brooks v. Britton*, 669 F.2d 665, 666-67 (11th Cir. 1982) (holding that *pro se* litigants are required to move timely for extension of time in order to file a late notice of appeal pursuant to Federal Rule of Appellate Procedure 4(a)(5)). Accordingly, we lack jurisdiction over this appeal.

Any outstanding motions are DENIED as moot. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules.

EXHIBIT B

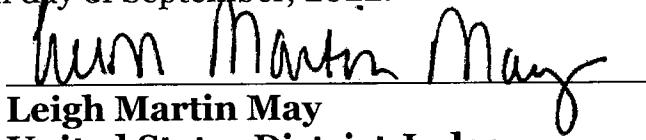
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

ZACHARY JAMES	:	
MCALEXANDER,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:21-cv-03331-LMM
D.G. YUENGLING & SON,	:	
INCORPORATED, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**ORDER**

Plaintiff has filed a pro se Motion to Vacate the Court's Order dismissing his case under Federal Rule of Civil Procedure 60. Defendant's essential argument is that the statute of limitations should not bar his claim because he is still suffering continuous injury. Although the Court is sympathetic as to Plaintiff's condition, the statute of limitations does not work in the way Plaintiff suggests. Instead, as the Order correctly states, the statute of limitations begins running from the date Plaintiff claims that he was initially injured and diagnosed. As such, the statute of limitation expired before Plaintiff filed his complaint. Plaintiff's Motion to Vacate is **DENIED**. Dkt. [41].

**IT IS SO ORDERED** this 13th day of September, 2022.

  
Leigh Martin May  
United States District Judge