

United States Court of Appeals
for the Fifth Circuit

No. 22-50959

MARSHALL RAY PARTAIN,

Plaintiff—Appellant,

versus

OFFICER JASON HALLMARK, *Badge #6307 Austin Police Department;*
OFFICER SHARDAY MELERO, *Badge #8771 Austin Police Department,*

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:21-CV-829

UNPUBLISHED ORDER

Before ELROD, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:

"This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment.

Appendix A

No. 22-50959

In this prisoner civil rights case, the district court entered a final judgment dismissing the complaint on September 14, 2023. Therefore, the final day for filing a timely notice of appeal was October 14, 2023.

Plaintiff filed two *pro se* notices of appeal. The first is dated October 26, 2022 and stamped as filed on October 31, 2022. The second is dated November 16, 2022 and stamped as filed on November 21, 2022. Because the notices of appeal are dated October 26, 2022 and November 16, 2022, they could not have been deposited in the prison's mail system within the prescribed time. *See FED. R. APP. P. 4(c)(1)* (prisoner's *pro se* notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing). When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v Garcia-Machado*, 845 F.2d 492, 493 (5th Cir. 1988).

Accordingly, the appeal is DISMISSED for want of jurisdiction. All pending motions are DENIED.

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Appendix A