

Appendix A

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NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Maine

Notice of Electronic Filing

The following transaction was entered on 10/25/2022 at 5:40 AM EST and filed on 10/25/2022

Case Name: MACDONALD v. DUDDY et al

Case Number: 2:22-cv-00293-JAW

Filer:

Document Number: 17 (No document attached)

Docket Text:

ORDER denying [15] Motion to Appoint Counsel. The Court discerns no reason to reconsider its order on Plaintiff's prior motion to appoint counsel. (Order, ECF No. 8.) Any objection to this order shall be filed in accordance with Federal Rule of Civil Procedure 72. By MAGISTRATE JUDGE JOHN C. NIVISON. (NIVISON, JOHN)

2:22-cv-00293-JAW Notice has been electronically mailed to:

2:22-cv-00293-JAW Notice has been delivered by other means to:

KINLEY MACDONALD
CUMBERLAND COUNTY JAIL
50 COUNTY WAY
PORTLAND, ME 04102

Appendix A

United States Court of Appeals For the First Circuit

No. 22-1921

KINLEY MACDONALD, Mother of AJ, BM and WM,

Plaintiff - Appellant,

v.

MICHAEL A. DUDDY, individually and in his official capacity; LEA-ANNE SUTTON, Judge, individually and in her official capacity; RICHARD W. MULHERN, Judge, individually and in his official capacity; JEANNE LAMBREW, individually and in her official capacity as representative for Maine Department of Health and Human Services; AARON M. FREY, Attorney General, individually and in his official capacity,

Defendants - Appellees,

JUDGE JOHN DOE 1, individually and in official capacity; JUDGE JOHN DOE 2, individually and in official capacity; DHHS WORKER JANE DOE 1-4; AAG JANE DOE 5-7,

Defendants.

Before

Barron, Chief Judge,
Kayatta and Gelpí, Circuit Judges.

JUDGMENT

Entered: May 3, 2023

Plaintiff-appellant Kinley MacDonald has filed a notice of appeal in the district court, challenging the district court's November 4, 2022, order affirming the magistrate judge's order denying MacDonald's second motion for appointed counsel, overruling MacDonald's objection to the magistrate judge's order, and denying MacDonald's third request for appointed counsel. After the appeal was opened, this court entered an order directing MacDonald to show cause why this appeal should not be dismissed for lack of appellate jurisdiction, where it did not appear the district court's order was final or otherwise immediately appealable. MacDonald has filed a response and a motion requesting the appointment of counsel.

As an initial matter, MacDonald's request that this court appoint counsel is denied. Having carefully considered MacDonald's response and relevant portions of the record, we conclude we lack jurisdiction. See Fabrica de Muebles J.J. Alvarez, Incorporado v. Inversiones Mendoza, Inc., 682 F.3d 26, 32 (1st Cir. 2012) ("The party asserting jurisdiction has the burden of demonstrating the existence of federal jurisdiction."). No final judgment has entered in the underlying district court case, the challenged order is not an appealable collateral order, and the district court has not certified the order pursuant to Fed. R. Civ. P. 54(b) or 28 U.S.C. § 1292(b). See 28 U.S.C. §§ 1291, 1292; see also SAI v. Transp. Security Admin., 843 F.3d 33, 36 (1st Cir. 2016) (per curium) (citing Appleby v. Meachum, 696 F.2d 145, 147 (1st Cir. 1983) (per curium) (order denying appointed counsel pursuant to 28 U.S.C. § 1915(e) not appealable as collateral order)).

Accordingly, the appeal is hereby dismissed. See 1st Cir. R. 27.0(c) (court may dismiss at any time when appellate jurisdiction is lacking).

By the Court:

Maria R. Hamilton, Clerk

cc:

Kinley MacDonald
Aaron M. Frey

Appendix B

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NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Maine

Notice of Electronic Filing

The following transaction was entered on 10/25/2022 at 5:44 AM EST and filed on 10/25/2022

Case Name: MACDONALD v. DUDDY et al

Case Number: 2:22-cv-00293-JAW

Filer:

Document Number: 18 (No document attached)

Docket Text:

ORDER denying [16] Motion to Proceed Without Prepayment of Fees and Costs. Plaintiff has not provided the Court with the information required by statute. The Court, however, extends to November 15, 2022, the time for Plaintiff to file a complete application to proceed without the prepayment of fees. If Plaintiff fails to pay the filing fee or file a complete application by November 15, the Court could dismiss the matter. By MAGISTRATE JUDGE JOHN C. NIVISON. (NIVISON, JOHN)

2:22-cv-00293-JAW Notice has been electronically mailed to:

2:22-cv-00293-JAW Notice has been delivered by other means to:

KINLEY MACDONALD
CUMBERLAND COUNTY JAIL
50 COUNTY WAY
PORTLAND, ME 04102

United States Court of Appeals For the First Circuit

No. 22-1949

KINLEY MACDONALD, Mother of AJ, BM and WM,

Plaintiff - Appellant

v.

MICHAEL A. DUDDY, individually and in his official capacity; LEA-ANNE SUTTON, Judge, individually and in her official capacity; RICHARD W. MULHERN, Judge, individually and in his official capacity; JEANNE LAMBREW, individually and in her official capacity as representative for Maine Department of Health and Human Services; AARON M. FREY, Attorney General, individually and in his official capacity,

Defendants - Appellees,

JUDGE JOHN DOE 1, individually and in official capacity; JUDGE JOHN DOE 2, individually and in official capacity; DHHS WORKER JANE DOE 1-4; AAG JANE DOE 5-7,

Defendants.

Before

Barron, Chief Judge,
Kayatta and Gelpí, Circuit Judges.

JUDGMENT

Entered: May 3, 2023

Plaintiff-appellant Kinley MacDonald has filed a notice of appeal in the district court, challenging the magistrate judge's November 23, 2022, order adjudicating MacDonald's "Motion to Correct Error." After the appeal was opened, this court entered an order directing MacDonald to show cause why this appeal should not be dismissed for lack of appellate jurisdiction, where it did not appear the district court's order was final or otherwise immediately appealable. MacDonald has filed a response and a motion requesting the appointment of counsel.

As an initial matter, MacDonald's request that this court appoint counsel is denied. Having carefully considered MacDonald's response and relevant portions of the record, we conclude we

lack jurisdiction. See Fabrica de Muebles J.J. Alvarez, Incorporado v. Inversiones Mendoza, Inc., 682 F.3d 26, 32 (1st Cir. 2012) ("The party asserting jurisdiction has the burden of demonstrating the existence of federal jurisdiction."). No final judgment has entered in the underlying district court case, the challenged order is not an appealable collateral order, and the district court has not certified the order pursuant to Fed. R. Civ. P. 54(b) or 28 U.S.C. § 1292(b). See 28 U.S.C. §§ 1291, 1292; see also United States v. Ecker, 923 F.2d 7, 9 (1st Cir. 1991) (a magistrate judge's order is not a final order that can be reviewed directly by a court of appeals, and a party seeking to challenge a magistrate judge's order must seek initial review in the district court).

Accordingly, the appeal is hereby dismissed. See 1st Cir. R. 27.0(c) (court may dismiss at any time when appellate jurisdiction is lacking).

By the Court:

Maria R. Hamilton, Clerk

cc:

Kinley MacDonald
Aaron M. Frey

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ORDER DEFERRING RULING ON MOTION FOR RECONSIDERATION

On November 4, 2022, this Court issued an order overruling Kinley MacDonald’s objection to the Magistrate Judge’s denial of her motion for appointment of counsel and denying her motion to this Court for appointment of counsel. *Order on Pl.’s Obj. and Renewed Mot. for Appointment of Counsel* ([ECF No. 21](#)). On November 18, 2020, Ms. MacDonald filed what the Court has interpreted as a motion for reconsideration of this Court’s November 4, 2022 order. *Mot. to Correct Errors or Appeal ORDER on Pl.’s Obj. and Renewed Mot. for Appointment or Counsel* ([ECF No. 23](#)). Before the Court was able to address Ms. MacDonald’s motion for reconsideration, on November 23, 2022, she filed a notice of appeal. *Interlocutory Appeal* ([ECF No. 25](#)).

Typically, when a matter has been appealed, the trial court loses jurisdiction to rule on motions before it because two courts may not generally exercise jurisdiction over the same case at the same time. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (“[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously”); *Colón-Torres v.*

Negrón-Fernández, 997 F.3d 63, 74 (1st Cir. 2021). There is an exception for matters not touching on the issue on appeal. *Griggs*, 459 U.S. at 58 (“The filing of a notice of appeal is an event of jurisdictional significance -- it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal”); *Colón-Torres*, 997 F.3d at 74 (“We have also held that the rule permits a district court to enter orders that concern matters unrelated to the substance of the decision being appealed”) (internal punctuation omitted). But here the motion for reconsideration addresses the same issue Ms. MacDonald is raising on appeal.

Even so, Federal Rule of Appellate Procedure 4(a)(4) provides that if the appellant has filed one of several enumerated motions, the time to file an appeal runs from the entry of an order disposing of the motion. FED. R. APP. P. 4(a)(4)(A)(i)-(vi). Rule 4 also provides that if a party files a notice of appeal after the court enters judgment but before it disposes of one of the listed motions, “the notice becomes effective to appeal a[n] . . . order, in whole or in part, when the order disposing of the last such remaining motion is entered.” FED. R. APP. P. 4(a)(4)(B)(i). A motion for reconsideration may be deemed to fit within one of Rule 4(a)(4)’s enumerated motions. *Minor Son v. Doctors’ Ctr. Hosp. Bayamón, Inc. (In re González-Arroyo)*, No. 21-1689, 2022 U.S. App. LEXIS 32198, at *21 (1st Cir. Nov. 22, 2022) (noting that a motion for reconsideration had been brought as a Federal Rule of Civil Procedure 59(e) motion to alter or amend a judgment).

Here, the Court is uncertain whether the First Circuit will consider Ms. MacDonald's motion for reconsideration to be one of the motions listed in Rule 4(a)(4)(A)(i)-(iv)—and therefore this Court should rule on the motion for reconsideration before the First Circuit proceeds with the appeal—or whether the First Circuit will address the appeal regardless of the pending motion. Accordingly, the Court will defer action on the motion for reconsideration to receive guidance from the Court of Appeals, either by a request that the Court resolve the pending motion for reconsideration or by an order from the appellate court addressing the appeal pending before it.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of November, 2022

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from this filing is
available in the
Clerk's Office.**