

No. 22-5133

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
KENTUCKY

Andrew Fields, III, filed a complaint pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). On May 5, 2021, the district court entered a memorandum and separate order dismissing the complaint pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute. Fields had until July 5, 2021, to appeal. *See* Fed. R. Civ.

No. 22-5133

- 2 -

P. 6(a)(1). Fields filed a motion to reconsider on August 24, 2021, but this motion was untimely and thus did not toll the appeal period. *See* Fed. R. Civ. P. 59(e); Fed. R. App. P. 4(a)(4); *Torras Herreria y Construcciones, S.A. v. M/V Timur Star*, 803 F.2d 215, 216 (6th Cir. 1986). The district court denied the motion to reconsider on January 7, 2022. In a notice of appeal, dated January 3, 2022, and filed in the district court on February 14, 2022, Fields states that “he wishes to appeal the decision . . . where judgment was entered sometime during mid 2021 whereas plaintiff never received a copy of the final judgment.” The notice of appeal is late as it applies to the May 5, 2021, judgment. *See* 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B).

Both 28 U.S.C. § 2107(c) and Federal Rule of Appellate Procedure 4(a)(6) allow an appellant to move to reopen the time to file an appeal if the appellant did not receive timely notice of the entry of the order or judgment from which he appeals. The district court may reopen the time to file an appeal if the following conditions are satisfied: (1) the appellant did not receive notice of the entry of judgment within 21 days after its entry, (2) the appellant files a motion for extended time within 180 days after the judgment or order is entered or within 14 days after receiving notice, whichever is earlier, and (3) no party would be prejudiced by an extension of time. 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(6). Fields cannot obtain relief under either provision. Even if he had not received proper notice of the May 5, 2021, order within 21 days of its entry, any motion to reopen would have been due 180 days after May 5, 2021, which was November 1, 2021. The time period for filing a motion to reopen is strictly applied. *Bowles v. Russell*, 432 F.3d 668, 676 (6th Cir. 2005).

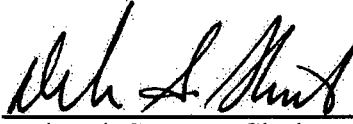
Fields’s failure to timely file a notice of appeal deprives this court of jurisdiction. Compliance with the statutory deadline in § 2107 is a jurisdictional prerequisite that this court may not waive. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 21 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

No. 22-5133

- 3 -

Accordingly, appeal No. 22-5133 is **DISMISSED** for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT

A handwritten signature in dark ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

ANDREW FIELDS III

Plaintiff

v.

Civil Action No. 3:20-cv-P705-RGJ

PATRICK J. BOULDIN, *et al.*

Defendants

* * * * *

ORDER

For the reasons set forth in the Memorandum entered this date,

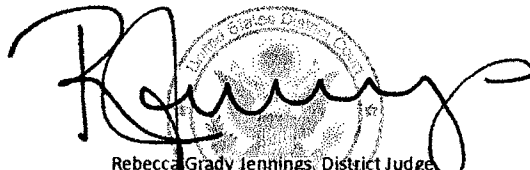
IT IS HEREBY ORDERED that the instant action is **DISMISSED** without prejudice pursuant to Fed. R. Civ. P. 41(b).

There being no just reason for delay in its entry, this is a **final Order**.

The Court further **certifies** that an appeal of this action would not be taken in good faith.

See 28 U.S.C. § 1915(a)(3).

Date: May 5, 2021


Rebecca Grady Jennings, District Judge
United States District Court

cc: Plaintiff, *pro se*
Defendants
A961.010

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

ANDREW FIELDS III

Plaintiff

v.

Civil Action No. 3:20-CV-P705-RGJ

PATRICK J. BOULDIN, *et al.*

Defendants

* * * * *

MEMORANDUM

Plaintiff Andrew Fields III filed the instant *pro se* 42 U.S.C. § 1983 action. The Clerk of Court mailed Plaintiff an Order entered in this case on December 7, 2020 (DN 7). However, the mailing was returned by the United States Postal Service marked “Return to Sender, Attempted – Not Known, Unable to Forward” indicating that Plaintiff no longer resides at his address of record (DN 8).

Upon filing the instant action, Plaintiff assumed the responsibility of keeping this Court advised of his current address and to actively litigate his claims. *See* LR 5.3(e) (“All *pro se* litigants must provide written notice of a change of residential address . . . to the Clerk and to the opposing party or the opposing party’s counsel. Failure to notify the Clerk of an address change may result in the dismissal of the litigant’s case or other appropriate sanctions.”). Rule 41(b) of the Federal Rules of Civil Procedure authorizes the involuntary dismissal of an action if a plaintiff fails to prosecute or to comply with an order of the court. *See Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991) (“Fed. R. Civ. P. 41(b) recognizes the power of the district court to enter a *sua sponte* order of dismissal.”). Although federal courts afford *pro se* litigants some leniency on matters that require legal sophistication, such as formal pleading rules, the same policy does not support leniency from court deadlines and other procedures readily understood by