

(6)

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 23, 2023

No. 23-20092
Summary Calendar

Lyle W. Cayce
Clerk

ROOSEVELT L. LINCOLN, *also known as* ROOSEVELT L. LINICOMN,
JR.,

Plaintiff—Appellant,

versus

HARRIS COUNTY SHERIFF'S OFFICE/HEALTH SYSTEMS;
PRECINCT 4 CONSTABLE RILEY; CONSTABLE PRECINCT 4
OFFICER 1; CONSTABLE PRECINCT 4 OFFICER 2; HARRIS
COUNTY CONSTABLE'S OFFICE FOR PRECINCT 4, COMPLAINT
TRACKING SYSTEM; GASTON CASILLAS,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-4207

Before JONES, WILLETT, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

Roosevelt L. Lincoln moves for leave to proceed in forma pauperis (IFP) on appeal. The district court dismissed his pro se 42 U.S.C. § 1983 complaint without prejudice for failure to timely serve the named defendants in accordance with Federal Rule of Civil Procedure 4(m), and it subsequently denied his series of motions seeking relief under Federal Rules of Civil Procedure 59(e) and 60(b). We liberally construe Lincoln's pro se notice of appeal, which does not specify the judgment or order from which the appeal is taken, to designate the judgment of dismissal and the denials of all postjudgment motions. *See FED. R. APP. P. 3(c)(1)(B); Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Williams v. Henagan*, 595 F.3d 610, 616 (5th Cir. 2010).

We must examine the basis of our jurisdiction, *sua sponte*, if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). “[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement.” *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Once the district court denied Lincoln's Rule 59(e) motion on November 30, 2022, the 30-day period for filing his notice of appeal from the judgment of dismissal and the Rule 59(e) denial commenced. *See FED. R. APP. P. 4(a)(1)(A) and (4)(A)(iv)*. The filings of his subsequent Rule 60(b) motions, which raised arguments substantially identical to those raised in his Rule 59(e) motion, did not toll the Rule 4 appellate deadline. *Charles L.M. v. Northeast Independent School Dist.*, 884 F.2d 869, 870-71 (5th Cir. 1989) (holding that, once district court denied appellant's first Rule 59(e) motion, Rule 4 appeal period began running and was not interrupted by filing of second motion to reconsider raising same arguments). Thus, the March 8, 2023 notice of appeal is untimely as to the judgment of dismissal, the denial of Rule 59(e) relief, and the December 8, 2022 denial of Rule 60(b) relief. *See FED. R. APP. P. 4(a)(1)(A) and (4)(A)(iv)*. We therefore have jurisdiction to consider only Lincoln's timely appeal from the February 14, 2023 dismissal of his December 19, 2022, and

January 23, 2023 Rule 60(b) motions, which motions contended that he had been prevented from timely serving the defendants by his wrongful incarceration. *See FED. R. APP. P. 4(a)(1)(A); Bowles*, 551 U.S. at 214; *Williams v. Chater*, 87 F.3d 702, 705 (5th Cir. 1996) (explaining that denial of Rule 60(b) motion is separately appealable, but such appeal does not bring up underlying judgment for review).

Lincoln's IFP motion challenges the district court's determination that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into whether the appeal is taken in good faith "is limited to whether the appeal involves 'legal points arguable on their merits (and therefore not frivolous).' " *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (citation omitted).

Lincoln does not address the court's dismissal of his December 2022 and January 2023 Rule 60(b) motions for lack of jurisdiction and as moot; he has therefore abandoned any challenge to the dismissal on those grounds. *See Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993) (holding that pro se appellant must brief arguments to preserve them); *Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987) (observing that failure to identify any error in district court's analysis is same as if appellant had not appealed). Further, although Lincoln contends that he was prevented from serving the defendants because he was wrongly incarcerated for approximately four months between April and August 2022, the district court reasoned that he had been afforded ample time and opportunity when he was not incarcerated to serve the defendants (his suit had been pending for over one year and 10 months when the court dismissed it), and he does not substantively address this rationale. *See Brinkmann*, 813 F.2d at 748. He thus raises no nonfrivolous argument that the district court abused its discretion by dismissing his December 2022 and January 2023 Rule 60(b)

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motions. *See Bailey v. Cain*, 609 F.3d 763, 767 (5th Cir. 2010); *Howard*, 707 F.2d at 220.

Lincoln's motion to proceed IFP is DENIED, and his appeal is DISMISSED in part for lack of jurisdiction and in remaining part as frivolous. *See Bowles*, 551 U.S. at 214; *Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

Appendix "E"

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 19, 2023

No. 23-20092

Lyle W. Cayce
Clerk

ROOSEVELT L. LINCOLN, *also known as ROOSEVELT L. LINICOMN,
JR.*,

Plaintiff—Appellant,

versus

HARRIS COUNTY SHERIFF'S OFFICE/HEALTH SYSTEMS;
PRECINCT 4 CONSTABLE RILEY; CONSTABLE PRECINCT 4
OFFICER 1; CONSTABLE PRECINCT 4 OFFICER 2; HARRIS
COUNTY CONSTABLE'S OFFICE FOR PRECINCT 4, COMPLAINT
TRACKING SYSTEM; GASTON CASILLAS,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:20-CV-4207

ON PETITION FOR REHEARING

Before JONES, WILLETT, and DUNCAN, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

United States District Court
Southern District of Texas

ENTERED

February 14, 2023

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROOSEVELT LINICOMN, a/k/a
ROOSEVELT LINCOLN,

Plaintiff,

v.

CIVIL ACTION NO. H-20-4207

HCSO, *et al.*,

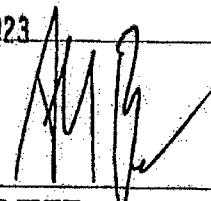
Defendants.

LAST DISMISSAL

ORDER

Plaintiff's second and third *pro se* motions for relief under Federal Rule of Civil Procedure 60(b) (Docket Entries No. 98, 99) are **DISMISSED FOR LACK OF JURISDICTION**. In the alternative, the motions are **DISMISSED AS MOOT**. The Court denied plaintiff's Rule 60(b) motion on December 8, 2022, and these subsequent Rule 60(b) motions reiterate the same arguments and grounds for relief.

Signed at Houston, Texas, on FEB 14 2023



ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

United States District Court
Southern District of Texas

ENTERED

December 08, 2022

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROOSEVELT LINICOMN, a/k/a §
ROOSEVELT LINCOLN, §

Plaintiff,

V. 8

HCSO, *et al.*,

Defendants.

CIVIL ACTION NO. H-20-4207

ORDER

Plaintiff's *pro se* motion for relief under Federal Rule of Civil Procedure 60(b)

(Docket Entry No. 96) is DENIED for lack of merit. Plaintiff's arguments reiterate prior arguments rejected by the Court and warrant no relief.

Signed at Houston, Texas, on

12/8/22

ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

December 01, 2022
Nathan Ochsner, Clerk

ROOSEVELT LINICOMN, a/k/a
ROOSEVELT LINCOLN,

Plaintiff,

v.

HCSO, *et al.*,

Defendants.

CIVIL ACTION NO. H-20-4207

ORDER

Plaintiff's motion to retain this *pro se* civil lawsuit (Docket Entry No. 92) is **DENIED**. The Court dismissed this lawsuit under Federal Rule of Civil Procedure 4(m) on October 28, 2022. To the extent plaintiff's motion can be construed as one brought under Rule 59(e), the motion lacks merit and is **DENIED**. As the Court discussed in its order of dismissal, and as acknowledged by plaintiff, plaintiff did not timely and properly serve the defendants despite adequate opportunity and extensions of time, nor did he complete the paperwork for issuance of process for service through the U.S. Marshal's Office as directed by the Court.

Signed at Houston, Texas, on NOV 30 2022

ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

ENTERED

April 21, 2022

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROOSEVELT LINICOMN, a/k/a
ROOSEVELT LINCOLN,

Plaintiff,

v.

HCSO, *et al.*,

Defendants.

CIVIL ACTION NO. H-20-4207

ORDER

Roosevelt Linicomm, a Harris County pretrial detainee who has been released on bond, filed this *pro se* lawsuit under 42 U.S.C. § 1983 against named and unnamed Harris County agencies and employees. He raises claims for use of excessive force during his arrest and improper treatment of his physical injuries.

Plaintiff filed this lawsuit on December 10, 2020. Because plaintiff failed to obtain service on the defendants, the Court ordered plaintiff on October 7, 2021, to serve the defendants within thirty days. To-date, plaintiff has not completed and filed the forms necessary for issuance of summons pursuant to Rule 4 of the Federal Rules of Civil Procedure and the defendants remain unserved.¹ Nevertheless, plaintiff has filed several pending motions. The Court **ORDERS** as follows:

¹The Court will order the United States Marshals Service to serve summons and complaint on the defendants. However, because plaintiff is not in custody, he must complete the forms necessary for issuance of the summons and complaint through the Clerk's Office.

1. Plaintiff's motion for discovery and inspection (Docket Entry No. 20) is **DENIED WITHOUT PREJUDICE**. No defendants are before the Court, and the motion is premature.
2. Plaintiff's motion for service of his lawsuit through "the County Clerk" (Docket Entry No. 22) is **DENIED**. Plaintiff must complete and submit the proper forms for requesting issuance of summons and complaint with the Clerk's Office for the Southern District of Texas at 515 Rusk, Houston, Texas 77002.
3. Plaintiff's motion for additional time to obtain and file evidence of his medical history (Docket Entry No. 23) is **DENIED AS MOOT**. No deadline currently exists for plaintiff to obtain and file evidence of his medical history.
4. Non-party Constable Precinct Four's motion to quash subpoenas of videos (Docket Entry No. 40) is **DISMISSED AS MOOT**. Non-party Constable Precinct Four filed an amended motion to quash the subpoenas on December 14, 2021.
5. Non-party Constable Precinct Four's amended motion to quash subpoenas of videos (Docket Entry No. 41) is **GRANTED**. Plaintiff's subpoenas were not properly issued or served, nor has plaintiff filed proper proof of service. Nevertheless, the Office of the Harris County Attorney stated that, to the extent copies of the requested videos were available, they would be provided to plaintiff.
6. Plaintiff's motion to dismiss Non-Party Constable Precinct Four's amended motion to quash subpoenas of videos (Docket Entry No. 43) is **DENIED**.
7. Plaintiff's second motion for discovery and inspection (Docket Entry No. 42) is **DENIED WITHOUT PREJUDICE**. No defendants are before the Court, and the motion is premature.
8. Plaintiff's motion for default judgment as to the named defendants (Docket Entry No. 44) is **DENIED**. Plaintiff's handwritten and/or typewritten "notices" of his lawsuit did not constitute service of summons and complaint. Plaintiff has not properly served the defendants in accordance with Federal Rule of Civil Procedure 4 and they are not in default.

9. Plaintiff's motions for contempt (Docket Entries No. 47, No. 51) and for a hearing (Docket Entry No. 48) are **DENIED**. Plaintiff's subpoenas were not properly issued or served, nor did plaintiff serve defendants with a copy of his motions for contempt and for hearing. No defendant or party is in contempt of court at this time. Nevertheless, the Office of the Harris County Attorney shows that it voluntarily delivered a copy of the requested videos to plaintiff at his address of record on January 11, 2022. (Docket Entry No. 53.) Plaintiff indicates that he received and reviewed the videos. (Docket Entry No. 66.)
10. Plaintiff's motion for award of \$5,000.00 attorney's fees (Docket Entry No. 55) is **DENIED**. Plaintiff is proceeding *pro se* and has not incurred attorney's fees in this lawsuit.
11. Plaintiff's motion for a "temporary restraining order for gun carrying policy/laws" (Docket Entry No. 55) is **DENIED**. Plaintiff pleads no legal or factual basis for a temporary restraining order.
12. Plaintiff's "motion enforcing judgment" (Docket Entry No. 59) is **DENIED**. No judgment has been entered in this lawsuit.
13. Plaintiff's motion for sanctions (Docket Entry No. 61) is **DENIED**. The Court has not entered any orders for discovery in this lawsuit, and plaintiff pleads no legal or factual basis for sanctions.
14. This lawsuit has been on file for over sixteen months and plaintiff has yet to obtain issuance of summons and complaint for service under Rule 4. Plaintiff failed to comply with the Court's order of October 7, 2021, to serve the defendants within thirty days. Accordingly, this lawsuit will be DISMISSED without further notice if plaintiff fails to obtain issuance of summons and complaint for each defendant within THIRTY DAYS from date of this order.

Signed at Houston, Texas, on APR 21 2022


ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

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