

APPENDIX: A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 14, 2023

Lyle W. Cayce
Clerk

STEVE VAN HORNE,

No. 23-10593

Plaintiff—Appellant,

versus

JUDGE ROBERT JONES, *also known as* BOB JONES; TYLER CAGEL,
Assistant District Attorney; Justice of the Peace Precinct 2,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:23-CV-17

UNPUBLISHED ORDER

Before STEWART, GRAVES, and OLDHAM, *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.

No. 23-10593

In this civil rights action, the district court entered an order dismissing the complaint on May 1, 2023 for failure to prosecute. Therefore, the final day for filing a timely notice of appeal was May 31, 2023. Plaintiff has filed *pro se* notices of appeal on June 1, 2023, June 21, 2023, and June 22, 2023. 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.

APPENDIX: B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

STEVE VAN HORNE,

Plaintiff,

v.

No. 1:23-CV-017-H

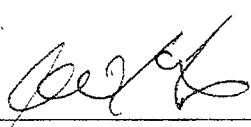
ROBERT JONES, et al.,

Defendants.

ORDER

On March 7, 2023, the Court denied the plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs and ordered the plaintiff to pay the required filing fee of \$402.00 within 30 days. Dkt. No. 9. The Court subsequently denied the plaintiff's motion to reconsider its order. Dkt. No. 12. Still, the plaintiff failed to pay the required filing fee within 30 days as ordered by the Court. As a result, the Court ordered the plaintiff to pay the filing fee by no later than April 25, 2023. Dkt. No. 13. The Court warned that "refusal to comply with [its] order may result in dismissal of [the plaintiff's] claims without prejudice." *Id.* The deadline has passed, and, despite the Court's multiple orders, the plaintiff has still failed to pay the required filing fee.¹ Therefore, this case shall be dismissed without prejudice to the plaintiff refiling and paying the requisite fee.

So ordered on May 1, 2023.


JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE

¹ The Court is aware of the plaintiff's notice of unavailability between March 31, 2023, and May 26, 2023, while he attends a spiritual retreat. Dkt. No. 11. But the Court is not obligated to fashion its proceedings in accordance with the plaintiff's personal schedule. To the contrary, the plaintiff—who seeks relief from this Court—has an obligation to heed the requirements imposed by it.

APPENDIX: J

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

STEVE VAN HORNE,

Plaintiff,

v.

ROBERT JONES, et al.,

Defendants.

No. 1:23-CV-017-H-BU

ORDER

United States Magistrate Judge John R. Parker made Findings, Conclusions, and a Recommendation (FCR) (Dkt. No. 7) regarding Steve Van Horne's Application to Proceed in District Court Without Prepaying Fees or Costs (Dkt. No. 6). Judge Parker recommended that the Court deny the application and order Van Horne to pay the \$402.00 filing fee within 30 days of the date of its order. Dkt. No. 7 at 4. Van Horne timely filed an objection, restating representations he made in his initial application. Dkt. No. 8. For the reasons stated below, the Court accepts and adopts the FCR.

1. Background

Proceeding pro se, Van Horne filed a complaint alleging that the defendants violated his constitutional rights when prosecuting him for driving without a driver's license. Dkt. No. 1. Van Horne also filed a Statement of Inability to Afford Payment of Court Costs. Dkt. No. 4. The magistrate judge ordered Van Horne to complete a formal application to proceed IFP (Dkt. No. 5), and Van Horne complied (Dkt. No. 6).

Van Horne represented in his application that he works for two different employers. Dkt. No. 6 at 2. He also documented an average monthly income of \$2,700 over the last year, in addition to his wife's average monthly income of \$1,200. *Id.* at 1. Nevertheless,

Van Horne claimed that he did not expect to receive any income in the next month. *Id.*

Later in the application, Van Horne noted that because he “[is] a minister,” he “ha[s] taken a vow of poverty.” *Id.* at 5. But he also confirmed that he does not “expect any major changes to [his] monthly income . . . during the next 12 months.” *Id.*

Based on these representations, the magistrate judge found that Van Horne has a combined yearly income of \$46,800. Dkt. No. 7 at 2. Further, the magistrate judge found that Van Horne failed to explain why he would not continue to receive income despite his documented employment and confirmation that he does not expect his income to change over the next year. *Id.* at 2–3. In light of applicable poverty guidelines, the magistrate judge recommended that Van Horne be ordered to pay the filing fee. *Id.* at 3.

Shortly after, Van Horne filed an objection, restating that he cannot pay the fee because he has “entered into a vow of poverty.” Dkt. No. 8 at 1. Van Horne concludes that, in light of this vow, “he does not know what the cost of his work will be” and cannot “comfortably answer th[e] question of income for any of the upcoming months.” *Id.* at 2. He confirms, however, that “[t]he ministry has offered to pay for reasonable expenses incurred for [his] ministerial duties,” citing question nine of his application where he stated that he does not expect major changes to his income over the next year. *Id.* at 1.

2. Legal Standards

Generally, the Court “must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see* 28 U.S.C. § 636(b)(1). But this rule only applies to objections that are “specific and clearly aimed at particular findings in the magistrate judge’s proposal.” *United States v. Swinton*, 251 F. Supp. 3d 544, 549 (W.D.N.Y. 2017) (citation omitted); *see* Fed. R. Civ. P. 72(b)(2). “Objections

that are merely perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original [papers] will not suffice to invoke de novo review.” *Vaccariello v. XM Satellite Radio, Inc.*, 295 F.R.D. 62, 67 (S.D.N.Y. 2013) (internal quotation marks omitted). Similarly, an objection that merely disagrees with a recommendation or summarizes what has been presented before cannot trigger de novo review. *VanDiver v. Martin*, 304 F. Supp. 2d 934, 937 (E.D. Mich. 2004). In such cases, a court reviews the FCR for plain error alone. *See Freeman v. Am. Credit Acceptance, LLC*, No. 4:20-CV-01211-P-BP, 2021 WL 1015956, at *2 (N.D. Tex. 2021) (citing *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1417 (5th Cir. 1996)).

3. Van Horne’s claim that he cannot pay the filing fee due to his vow of poverty is conclusory and contradicted by the record.

Van Horne’s objection rests on representations previously made by him and considered by the magistrate judge. In particular, he highlights his “vow of poverty,” which he disclosed in his initial application. *Compare* Dkt. No. 8 at 1, *with* Dkt. No. 6 at 5. Van Horne also states that he does not expect to receive income next month. Dkt. No. 8 at 2. Again, he already made this claim in the application reviewed by the magistrate judge. *See* Dkt. No. 6 at 1. Van Horne attempts to provide clarifying context for the representations in his initial application; however, whether his income will be discontinued remains entirely unclear, as even he admits that he cannot “estimate [his expected income] at this point.” *See* Dkt. No. 8 at 2. Given the overlap of information presented in his initial application and his objection, the Court need only review the FCR for plain error. And, here, it finds none. The magistrate judge reasonably concluded based on available information that Van Horne failed to show how—despite having two jobs and a combined income of nearly \$50,000 last year—he cannot pay a filing fee.

Even under a less deferential standard of review, Van Horne's objection falls short. Courts have held that a plaintiff who has documented present employment and consistent monthly income must sufficiently explain an expected drop in income to proceed IFP. *See, e.g., Salin v. Indus. Bldg. Prod.*, No. 20-CV-2290 (PJS/LIB), 2021 WL 7186801, at *1 (D. Minn. 2021) (denying a motion to proceed IFP when the plaintiff "g[ave] no explanation" for omitting expected future income); *Bell v. Gray*, No. 20CIV1588JPCSLC, 2022 WL 4617014, at *3 (S.D.N.Y. 2022) (finding that a plaintiff's "characteriz[ation] [of] himself as actively engaged in an activity that . . . produces income[] [wa]s inconsistent with his sworn statements in the IFP Application that he had 'no reliable expectation of future income'").

Without such an explanation, or even a clear indication of how much Van Horne expects his income to drop, the Court can only rely on the information available to it. Here, that information shows that Van Horne is working two jobs, has consistently received monthly income over the last year, and does not expect any major changes to his financial situation. Dkt. No. 6 at 1–2, 5. Moreover, Van Horne states that "[t]he ministry has offered to pay for [his] reasonable expenses" and does not indicate that his wife will stop receiving income. Dkt. No. 8 at 1. His claim that he cannot afford to pay a filing fee due to his "vow of poverty" is conclusory and contradicted by the record. Therefore, the Court finds that requiring Van Horne to pay the fee will not cause financial hardship.

4. Conclusion

For the above reasons, the Court overrules Van Horne's objection and accepts and adopts the FCR (Dkt. No. 7). Van Horne's Application to Proceed in District Court Without Prepaying Fees or Costs (Dkt. No. 6) is denied. He shall have 30 days from the date of this order to pay the required filing fee of \$402.00.

So ordered on March 7, 2023.



JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE

APPENDIX: P

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

STEVE VAN HORNE, §
§
Plaintiff, §
§
v. § Civil Action No. 1:23-cv-00017-H-BU
§
JONES, *et al.*, §
§
Defendants. §

ORDER

Plaintiff Steve Van Horne, proceeding pro se, filed a Complaint on January 18, 2023, alleging that Defendants violated his rights when he was prosecuted for driving without a license on November 11, 2020.¹ Dkt. No. 1. Now before the Court is Van Horne's Motion to Extend Time to File Appeal. *See* Dkt. No. 23. For the reasons explained below, Van Horne's Motion (Dkt. No. 23) is DENIED.

On February 2, 2023, Van Horne filed a Motion seeking leave to proceed *in forma pauperis* (IFP). Dkt. No. 6. The Court denied Van Horne's Motion on March 7, 2023, finding that payment of the filing fee would not cause Van Horne a financial hardship and ordered Van Horne to pay the filing fee no later than April 6, 2023. *See* Dkt. No. 9. On March 31, 2023, Van Horne filed a Motion for Reconsideration concerning the denial of his IFP Motion. Dkt. No. 10.

¹ Many of the claims asserted by Van Horne are similar to claims presented in case No. 1:21-cv-173-BU, where he challenged the constitutionality of Texas's driver license requirement in connection with a traffic violation on March 16, 2021. Van Horne's case No. 1:21-cv-173 was dismissed on August 2, 2023. Van Horne now appears to seek to relitigate those claims as well as allegations that the Defendants violated his rights throughout his prosecution. *See* Dkt. No. 1.

The Court denied Van Horne's Motion for reconsideration on March 31, 2023. Dkt. No. 12. On April 11, 2023, the Court noted that Van Horne had not paid the filing fee and ordered him to pay the filing fee no later than April 25, 2023. Dkt. No. 13. The Court dismissed Van Horne's case without prejudice on May 1, 2023, for failure to pay the filing fee. Dkt. No. 14.

On June 1, 2023, Van Horne filed a Notice of Appeal, challenging the Court's Order of March 7 that denied his IFP Motion. Dkt. No. 15. Van Horne then filed a Notice of Appeal (Dkt. No. 18) on June 21, 2023, and an Amended Notice of Appeal (Dkt. No. 19) on June 22, 2023. Van Horne's Amended Notice of Appeal indicates that it is his desire to appeal both the denial of his IFP Motion, as well as the dismissal of his lawsuit. *See id.* The earliest of Van Horne's Notices of Appeal was filed more than thirty (30) days after the entry of the orders he now seeks to appeal.

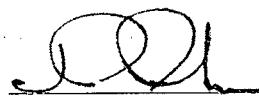
On July 25, 2023, Van Horne filed a Motion to Extend Time to File Appeal. Dkt. No. 23. Van Horne states that “[o]n July 14 the Appeals court dismissed the appeal for want of jurisdiction as the final day for filing a timely appeal would have been May 31, 2023.” *Id.* at 2. Van Horne asks the Court to “grant an extension of 30 days to file an appeal” because he argues that he shows “excusable neglect and good cause.” *Id.* Specifically, Van Horne alleges that he did not have notice that he was required to pay the filing fee because he had already departed on a religious retreat before he was aware that his Motion for Reconsideration was denied. *Id.* at 1. And Van Horne argues that his filing of his notice of unavailability informed the Court that he could not reply to correspondence

and that he should “be allotted ample to time attend to his religious practice and file his appeal.” *Id.* at 2.

A party must file a notice of appeal challenging an Order within 30 days of entry of the order. FED. R. APP. P. 4(A)(1)(A). The Federal Rules of Appellate Procedure allows the Court to extend that deadline if the party files a motion to extend the notice of appeal deadline within 30 days of its due date, provide the party shows either excusable neglect or good cause. FED. R. APP. P. 4(a)(5).

Here, Van Horne was required to file a notice of appeal challenging the dismissal of his lawsuit within 30 days of the entry of that Order, or by June 1, 2023, which he did not do. *See* FED. R. APP. P. 4(A)(1)(A). Van Horne was required to file a Motion seeking to extend the deadline to file a notice of appeal within 30 days of its due date, or by July 1, 2023, and show excusable neglect or good cause. *See* FED. R. APP. P. 4(a)(5). Van Horne did not file his Motion to Extend Time to File an Appeal until July 25, 2023. *See* Dkt. No. 23. Thus, Van Horne did not timely file his Motion to Extend Time to File a Notice of Appeal and his Motion must be DENIED.² *See Mays v. Collins*, 887 F. Supp. 942, 946 (N.D. Tex. 1995) (“The provisions of Rule 4(a) are mandatory and jurisdictional.”).

ORDERED this 3rd day of August, 2023.



JOHN R. PARKER
UNITED STATES MAGISTRATE JUDGE

² The undersigned notes that if the Court were to construe Van Horne’s Motion as requesting relief under Federal Rule of Civil Procedure 60, his Motion would still be denied. “Rule 60(b) was not designed to be a means of enlarging by indirection the time for appeal set forth in Rule 4.” *See Mays*, 887 F. Supp. at 946 (finding that a party’s claim that “he did not receive notice of entry of the order . . . is a legally inadequate reasons for the grant of relief under Rule 60(b)”).

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

