

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

September 28, 2023

Before

Ilana Diamond Rovner, Circuit Judge
Michael B. Brennan, Circuit Judge
Doris L. Pryor, Circuit Judge

No. 23-2669

HARVEY CANTRELL,
Plaintiff - Appellant,

v.

U.S. DEPT. OF VETERANS AFFAIRS,
Defendant - Appellee.

Appeal from the United
States District Court for
the Southern District of Illinois,
Eastern Division.

No. 3:16-cv-00830

Stephen P. McGlynn
Judge.

ORDER

On August 28, 2023, the court issued an order requiring that appellant, on or before September 12, 2023, file a brief memorandum stating why this appeal should not be dismissed for lack of jurisdiction. Appellant, however, has not filed a response. Therefore, on review of the papers filed in this appeal,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a civil case in which the United States is a party be filed in the district court within 60 days of the entry of the judgment or order appealed. In this case judgment was entered on May 19, 2017, when the district court dismissed with prejudice plaintiff-appellant's claims against the Department of Veterans Affairs for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b). The notice of appeal was filed on August 23, 2023, more than 6 years late. The district court has not granted an extension of the appeal period, *see* Rule 4(a)(5), and this court is not empowered to do so, *see* Fed. R. App. P. 26(b).

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-13671-E

HARVEY CANTRELL,

Plaintiff-Appellant,

versus

DEPARTMENT OF VETERANS AFFAIRS,
UNITED STATES SECRETARY OF VETERANS AFFAIRS,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Alabama

Before: ROSENBAUM, GRANT, and LAGOA, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED for lack of jurisdiction. Harvey Cantrell, proceeding *pro se*, signed and mailed the instant notice of appeal on October 13, 2021. That notice of appeal was then received and entered in the district court on October 19, 2021. Earlier that same day, the district court entered its final order and judgment dismissing Cantrell's complaint for lack of jurisdiction. Under these circumstances, we conclude that Cantrell's notice of appeal, which he mailed on October 13, 2021, did not evince an intent to appeal the October 19 final order and judgment. *See* Fed. R. App. P. 3(c); *Bogle v. Orange Cty. Bd. of Cty. Comm'rs*, 162 F.3d 653, 661 (11th Cir. 1998) ("Rule 3(c) requires that a notice of appeal designate an existent judgment or order, not one that is merely expected or that is, or should be, within the appellant's

contemplation when the notice of appeal is filed.”); *see also McDougald v. Jenson*, 786 F.2d 1465, 1474 (11th Cir. 1986).

However, Cantrell also filed in the district court a motion for leave to proceed *in forma pauperis* on appeal. That filing, entered in the district court on December 10, 2021, is timely and effective to appeal from the October 19, 2021 final order and judgment. *See* 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B); *Haney v. Mizell Mem’l Hosp.*, 744 F.2d 1467, 1472 (11th Cir. 1984). Accordingly, we DIRECT the district court to transmit that filing to this Court as a new notice of appeal from the final order and judgment.

All pending motions are DENIED as moot.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

December 13, 2016

By the Court:

HARVEY D. CANTRELL,
Plaintiff-Appellant,

No. 16-3868

v.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS,
Defendant-Appellee.

] Appeal from the United
] States District Court for
] the Southern District of
] Illinois.

] No. 3:16-cv-00830-MJR-SCW
]
] Michael J. Reagan,
] Chief Judge.

ORDER

The court, on its own motion, orders plaintiff-appellant Harvey D. Cantrell to show cause for his failure to respond to the court's order of November 18, 2016. Plaintiff-appellant Cantrell shall file his response on or before December 27, 2016.

Appellant is advised that failure to respond may result in the dismissal of this appeal.

The clerk is directed to attach a copy of the court's order of November 18, 2016, to appellant's copy of this order.



DEPARTMENT OF THE ARMY
HEADQUARTERS, FORT CARSON
AND
HEADQUARTERS, 4TH INFANTRY DIVISION (MECHANIZED)
FORT CARSON, COLORADO 80913

ORDER 197-651

6 OCTOBER 1980

CANTRELL, HARVEY D. PV1 ~~30000000~~ ATT CO 1st Bn 22nd Inf (WAKK1AA)
~~Ft. Carson CO 80913~~

You are reassigned to US Army Separation Transfer Point as indicated for separation processing. After processing, you are relieved from active duty, not by reason of physical disability, and assigned as indicated on date immediately following relief from active duty. Any temporary appointments held are terminated on your effective date of relief from active duty. If you are delayed in reporting to the separation transfer point, you still must report to the separation point as soon as possible or as authorized to receive a new effective date of relief from active duty.

Assigned to (for separation Processing): US Army Separation Transfer Point (WOVNO4)
Ft Carson CO 80913

Reporting date to separation transfer point: 10 October 1980

Date of relief from active duty: 10 October 1980

Assigned to: United States Army Reserve Control Group (ANNUAL TRAINING
Reserve Component Personnel and Administrative Center, St Louis MO 63132)

Military Selective Service Act Obligation: 03 JUNE 1986

Additional Instructions: You are not authorized movement of your dependents or household goods at Government expense. Military clothing items required to be retained UP AR 700-84, will be maintained until discharged from IRR. "SM authorized shipment of 225lbs of personal belongings to HOR, PI EAD or OAD."

FOR ARMY USE:

Auth: Chapter 5-33, AR 635-200

HOR: St. Clair, IL

PI EAD or OAD: St. Louis, MO

ETS: 10 October 1980

MDC: 7BE1

Format: 526

Comp: Regular Army

PEBD:

CIC:

Aval Date:

FOR THE COMMANDER:

Sheila A. Higgins
SHEILA A. HIGGINS
Captain, AGC
Assistant Adjutant General

DISTRIBUTION:

Indiv (25)

Ea Unit (5)

Ea PSNCO (5)

USAG Transfer Point Ft Carson CO 80913

OSI (2)