

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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ORDER

October 21, 2024

Before

DIANE S. SYKES, *Chief Judge*
FRANK H. EASTERBROOK, *Circuit Judge*
JOSHUA P. KOLAR, *Circuit Judge*

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| No. 24-2379 | ADEOYE ORIADE ADEBOWALE, Plaintiff - Appellant v. CITY OF CHICAGO, et al., Defendants - Appellees |
| Originating Case Information: District Court No: 1:20-cv-06054 Northern District of Illinois, Eastern Division District Judge Joan H. Lefkow | |

On consideration of the papers filed in this appeal and review of the short record,

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 be filed in the district court within 30 days of the entry of the judgment or order appealed. In this case judgment was entered, at the latest, on September 6, 2023. The district court denied appellant's motion for reconsideration filed after that entry of judgment on October 10, 2023. Appellant's January 3, 2024, motion for relief from the judgment under Rule 60(b) of the Federal Rules of Civil Procedure did not further suspend the time to appeal. *See Krivak v. Home Depot U.S.A., Inc.*, 2 F.4th 601, 604 (7th Cir. 2021). The district court denied that Rule 60(b) motion on January 5, 2024. The notice of appeal was then filed on August 7, 2024, at least eight months late with respect to the judgment and over six months late with respect to the order denying the Rule 60 motion. The district court has not granted an extension of the appeal period, *see Fed. R. App. P. 4(a)(5)*, and this court is not empowered to do so, *see Fed. R. App. P. 26(b)*.

Although the notice of appeal was filed within 30 days of the July 9, 2024, order providing an explanation for that January 5, 2024, order, the time to appeal runs from the entry of the judgment or order, not from when an explanation is provided. *See Walker v. Weatherspoon*, 900 F.3d 354, 356 (7th Cir. 2018). And the order providing that explanation does not aggrieve appellant in any way. Only a party aggrieved by an order may bring an appeal from that order. *See Senegal v. JPMorgan Chase Bank, N.A.*, 939 F.3d 878, 882 (7th Cir. 2019).

Order
of
Rehearing

APPENDIX B

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

December 30, 2024

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-2379

ADEOYE ORIADE ADEBOWALE,
Plaintiff-Appellant,

v.

CITY OF CHICAGO, et al.,
Defendants-Appellees.

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

No. 1:20-cv-06054

Joan H. Lefkow, *Judge.*

ORDER

Plaintiff-appellant filed a petition for rehearing and for rehearing en banc on December 9, 2024. No judge¹ in regular active service has requested a vote on the petition for rehearing en banc, and all members of the original panel have voted to deny panel rehearing. It is therefore ordered that the petition for rehearing and for rehearing en banc is DENIED.

¹ Circuit Judge John Z. Lee did not participate in the consideration of this petition.

those defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure. (*Id.* at 12–13.)

The case then entered discovery. Adebowale made essentially no effort to fulfill his Rule 26 obligations, and the City Defendants moved to dismiss for failure to prosecute. (*See* dkt. 81.) The magistrate judge described how events unfolded:

The District Judge initially set a December 17, 2021 deadline for the parties to exchange initial disclosures, as well as a May 31, 2022 fact discovery deadline. Dkt. 52. In March 2022, three months after the initial disclosure deadline, the City Defendants reported that [Adebowale] had not yet produced initial disclosures and had not responded to written discovery requests the City Defendants served on January 7, 2022. Dkt. 61. The City Defendants subsequently filed a motion to compel [Adebowale] to participate in discovery. Dkt. 65. The District Judge referred the motion to compel and discovery supervision more broadly to this Court. Dkt. 66. After the referral, the Court had a series of status conferences with the parties that resulted in a new deadline—May 17, 2022—for [Adebowale] to respond [to] written discovery and produce initial disclosures, and the Court warned [Adebowale] that “he must participate in discovery if this case is to proceed.” Dkt. 69–71.

[Adebowale] did not meet that deadline, and on May 23, 2022, the City Defendants filed the instant motion to dismiss for want of prosecution. Dkt. 72. This Court again warned [Adebowale] that he must participate in discovery if this case is to proceed. Dkt. 73 (“[Adebowale] is once again advised by the Court that he must participate in discovery if this case is to proceed”). The District Judge then ordered [Adebowale] to file a status report by June 14, 2022 indicating that he complied with the Court’s order requiring [Adebowale] to serve initial disclosures and responses to the City Defendant’s written discovery requests. Dkt. 74. The District Judge warned in the order that the case would be dismissed for want of prosecution if [Adebowale] failed to file such a status report. *Id.* [Adebowale] did not file a status report by June 14, 2022; he instead moved eight days later for an extension of time to respond to the motion to dismiss, which the District Judge granted. Dkt. 78, 79. [Adebowale] filed his response brief on June 30, 2022, styled as a motion in opposition to the City Defendants’ motion to dismiss. Dkt. 81. The response brief did not certify that [Adebowale] complied with his discovery obligations; instead, [Adebowale] argued that the City Defendants’ Rule 26(a) disclosures did not contain certain information that he thought should be included and that he had not been receiving email notifications from the Court.

(Dkt. 92 at 2.) As of the date of this order, Adebowale still has not submitted any filings indicating that he complied with his discovery obligations.

The court referred the City Defendants’ motion to dismiss for lack of prosecution to the magistrate judge for a report and recommendation. (Dkt. 83.) The magistrate judge analyzed the motion under Federal Rule of Civil Procedure 41(b), which provides that “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the

of a magistrate judge ... while still engaging in an independent decision-making process.” *Mendez v. Republic Bank*, 725 F.3d 651, 661 (7th Cir. 2013).

Adebowale raises six objections to the magistrate judge’s report and recommendation. First, Adebowale provides a procedural history of the case from his perspective, in which he raises various grievances regarding various defendants’ alleged failure to defend the case, his disagreement that his amended complaint superseded his original complaint, difficulties he had receiving emails and other electronic notices from the clerk’s office, the length of time it took the court to issue opinions on certain issues, and his belief that the court’s ruling on the City Defendants’ Rule 12(b)(6) motion to dismiss (dkt. 49) is a “legal nullity.” (Dkt. 96 at 3–9.) Adebowale contends this procedural history demonstrates his diligent conduct in the case. (*Id.*) Second, Adebowale argues the magistrate judge erred by failing to consider his argument about alleged insufficiencies in the City Defendants’ Rule 26 disclosures. Third, Adebowale contends that he was never adequately warned about the possibility of dismissal for failure to prosecute. Fourth, Adebowale complains that the time it took the magistrate judge to issue her report and recommendation shows she played lawyer for the City Defendants. Fifth, Adebowale contends that the probable merits of the case weigh in his favor. Sixth, Adebowale argues that the nature of his civil rights case weighs strongly against dismissal for failure to prosecute.

These arguments make no specific objections to the magistrate judge’s findings regarding the frequency and magnitude of Adebowale’s failure to participate in discovery, his personal responsibility for those failures, and the extent to which those failures have wasted the court’s time and prejudiced the City Defendants. And while the court therefore need not conduct a *de novo* review of those portions of the magistrate judge’s report, the accuracy of such findings is also readily apparent from an independent review of the record. The court therefore accepts the magistrate judge’s conclusion that “[Adebowale]’s repeated failures to meet the most basic discovery deadlines demonstrates a wanton disregard for the Court’s orders and has wasted both the Court’s and the City Defendants’ time.” (Dkt. 92 at 4.)

Adebowale’s objections also lack merit. While Adebowale believes the procedural history he cites shows his diligence in the case, that history does not point to any occasion on which he complied with his Rule 26 discovery obligations—nor can it, as there is no indication in the record that he has ever done so. Similarly, Adebowale’s complaint about the sufficiency of the City Defendants’ Rule 26 disclosures cannot excuse or justify his failure to participate in discovery. Nor has Adebowale presented any reason to think that the magistrate judge was biased against him or impermissibly played lawyer for the City Defendants. The district court referred the motion to dismiss for lack of prosecution to the magistrate judge in July 2022 and the magistrate judge issued her report and recommendation in October 2022—not even the slightest scintilla of bias or wrongdoing can be inferred from such fact.

The court also cannot conclude Adebowale lacked sufficient notice that failure to participate in discovery would result in dismissal of the case. The record shows that both this court and the magistrate judge repeatedly warned Adebowale that he must participate in discovery for the case to continue. (*See* dks. 69, 73, 74.) Moreover, even if such warnings were somehow insufficient to put Adebowale on notice, he has been specifically aware of the possibility of dismissal since the City Defendants filed their motion to dismiss for failure to prosecute in May 2022. Ten months later, there remains no indication in the record that

Adebowale has ever attempted to fulfill his discovery obligations—despite having clear knowledge of the looming possibility of dismissal.

As for Adebowale's remaining two arguments, the fact that his amended complaint survived a motion to dismiss for failure to state a claim says nothing about the strength of his case on the merits. To succeed in his lawsuit, Adebowale must present evidence sufficient to prove his allegations and claims. Because Adebowale has not participated in discovery, the court cannot assess the strength of his evidence and therefore has no opinion as to the probable merits. And while Adebowale would have this court give greater weight in his favor to the nature of his civil rights claims than did the magistrate judge, even plaintiffs that bring the most socially significant cases must participate in discovery. Adebowale has not, and dismissal of his complaint with prejudice as against the City Defendants is therefore proper.

After the City Defendants are dismissed, only the County Defendants will remain as defendants in this case. But the court concluded in September 2021 that Adebowale failed to show that he had properly served process on the County Defendants. (Dkt. 49 at 12–13.) The County Defendants still have not entered an appearance in this case, and Adebowale has not yet shown that he has corrected any defects in his service of process on such defendants. As such, it is not clear to the court that the County Defendants were ever properly served, and they are consequently subject to dismissal without prejudice under Federal Rule of Civil Procedure 4(m).¹ Therefore, the court orders Adebowale to show cause as stated in the Order above.

Date: March 23, 2023


U.S. District Judge Joan H. Lefkow

¹ Rule 4(m) provides, “If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m).

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ADEOYE O. ADEBOWALE,

Plaintiff,

V.

CITY OF CHICAGO, et al.,

Defendants.

Case No. 20 C 6054

Judge Joan H. Lefkowitz

ORDER

Plaintiff's motion to reconsider denial of partial summary judgment (dkt. 124) is denied. The court's order of April 24, 2023 (dkt. 109) is reinstated *nunc pro tunc* April 24, 2023. If for any reason the court of appeals should determine that a final judgment was not entered on July 12, 2023 (dkt. 123), the court hereby amends the judgment of July 12, 2023, as follows: **Plaintiff's motion for partial final judgment [122] is moot. This case is dismissed as to all claims and all defendants with prejudice. This is a final judgment. See Statement.**

Statement

In a Second Amended Complaint (dkt. 27-1), as relevant here, plaintiff claimed against Ana Craberra, an assistant state's attorney, deprivation of his civil rights based on her facilitating an application for a warrant, without probable cause, to search plaintiff's person to obtain a DNA sample. Plaintiff also sought indemnification for damages against Cook County, her employer. On September 9, 2021, in ruling on plaintiff's motion for entry of default against these defendants, the court stated, "Given the incomplete nature of Adebowale's submissions regarding service of process on Cook County and ASA Craberra, the Court finds that entry of default is inappropriate at this time, and Adebowale's motion is denied without prejudice." (Dkt. 49 at 13.) Thereafter, plaintiff did not establish service on either the county or Craberra.

On April 24, 2023,¹ the court ordered as follows:

Defendant Ana Craberra is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m). As no federal claims remain in this case, the court declines to exercise supplemental jurisdiction over the state law claim against defendant Cook County, and that claim is dismissed without prejudice. *See* 28 U.S.C. § 1367(c)(3). This order disposes of the last remaining claims against the last

¹ All events referenced herein occurred in 2023 unless otherwise stated.

remaining defendants in this case. As such, the court will enter judgment if Adebowale takes no further action by May 15, 2023.

(Dkt. 109). Notably, plaintiff filed a notice of appeal on April 21 (dkt. 106), which deprived the court of jurisdiction to enter the April 24 order. Nonetheless, plaintiff took no further action in response to that order. But on May 19, he filed a second notice of appeal (dkt. 114), noting in his docketing statement (dkt. 113) a challenge to this court's March 23 order (dkt. 104) dismissing all claims against City defendants because of plaintiff's failure to participate in discovery. On May 30, the court cancelled a status hearing because the case was on appeal. (Dkt. 119).

On June 20, the court of appeals remanded the case to the district court, holding that the appeal was premature because a final judgment had not been entered (dkt. 120, 121). This court entered a final judgment on July 12:

Plaintiff's motion for partial final judgment [122] is denied. This case is dismissed in its entirety, with prejudice for failure to prosecute, as to all defendants but Cook County and Craberra. Defendants Cook County and Craberra is [sic] dismissed without prejudice under Rule 4(m), Fed. R. Civ. P. This is a final judgment.

(Dkt. 123). Because more than 30 days have passed since the entry of judgment, the pending motion can only be considered as one for relief from judgment under Rule 60.

Plaintiff argues that dismissal of defendants Craberra and Cook County for failure to serve them with summons and complaint requires that the court grant a Rule 54(b) certification that an appeal may be taken on fewer than all claims or as to fewer than all the parties. Plaintiff argues that the court's summary denial of his motion for partial final judgment (dkt. 122) failed to explain the reasons and should be reconsidered. In ruling on that motion, the court determined that a final judgment on *all claims* and *all parties* was in order. As such, there was no need for a Rule 54(b) determination, although it would have been more appropriate to determine the motion moot rather than to deny it.

Plaintiff also points out that dismissal of some claims or parties without prejudice may not be sufficient for appellate jurisdiction. He cites, among other cases, *JTC Petroleum Co. v. Piasa Motor Fuels, Inc.*, which states, "[S]uch a form of dismissal [without prejudice with leave to reinstate on conditions] does not terminate the litigation in the district court in any realistic sense and so is not a final decision within the meaning of 28 U.S.C. § 1291[.]" 190 F.3d 775, 776–77 (7th Cir. 1999) (proceeding to the merits because the parties agreed during oral argument that the district court's disposition amounted to a final judgment).

Rule 4(m) authorizes dismissal without prejudice for failure to serve a defendant. Thus, the court on July 12 dismissed Cook County and Craberra without prejudice. (Dkt. 123). That said, because in a civil rights case the statute of limitations is two years, *e.g. Ray v. Maher*, 662 F.3d 770, 772–73 (7th Cir. 2011), and the second amended complaint alleges wrongdoing no later than October 2018, the time to file would have run for the filing of a new complaint against either Cook County or Craberra after October 2020. Although the statute of limitations is an affirmative defense that would not bar the filing of a complaint, plaintiff has failed to pursue the

litigation against the county defendants even so far as obtaining service of process consistently with Rule 4(c). As such, dismissal with prejudice on April 24 for failure to prosecute would certainly have been appropriate.

The court is satisfied in finding that this litigation was realistically over by July 12 and the judgment was therefore final on that date. If, however, an appeal should be taken and should the court of appeals determine that final judgment was not entered on July 12, the court hereby amends the judgment as stated above under the authority of Rule 60(a) to correct a judgment based on the court's "oversight" of the possibility that dismissal of the county defendants without prejudice might have foreclosed appellate jurisdiction.

Date: August 31, 2023


U.S. District Judge Joan H. Lefkow

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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APPENDIX D

ORDER

January 11, 2024

Before
DAVID F. HAMILTON, *Circuit Judge*

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|--|---|
| No. 23-1964 | ADEOYE O. ADEBOWALE, Plaintiff - Appellant v. CITY OF CHICAGO, et al., Defendants - Appellees |
| Originating Case Information: | |
| District Court No: 1:20-cv-06054 Northern District of Illinois, Eastern Division District Judge Joan H. Lefkow | |

Upon consideration of the **MOTION TO SUSPEND BRIEFING SCHEDULE PENDING DISTRICT COURT'S RULING ON APPELLANT'S MOTION FOR RELIEF FROM A VOID "AMENDED" JUDGMENT PURSUANT TO FED. R. CIV. P. 60(B)**, filed on January 4, 2024, by the pro se appellant,

IT IS ORDERED that the motion to suspend briefing is **DENIED**. To whatever extent the district court may have required leave under Rule 60(a) of the Federal Rules of Civil Procedure to enter its orders after appellant's May 19, 2023, notice of appeal, that leave is retroactively **GRANTED**. A review of the district court's docket suggests that under any construction of appellant's motions and the district court's orders, October 10, 2023, was the last possible date on which that notice of appeal became effective within the meaning of Rule 4 of the Federal Rules of Appellate Procedure. Accordingly, the court will not suspend briefing pending the resolution of any further motions in the district court. Briefing will proceed as follows:

1. The brief and required short appendix of the appellant are due by February 26, 2024.
2. The brief of the appellees is due by March 27, 2024.
3. The reply brief of the appellant, if any, is due by April 17, 2024.

Important Scheduling Notice!

Hearing notices are mailed shortly before the date of oral argument. Please note that counsel's unavailability for oral argument must be submitted by letter, filed electronically with the Clerk's Office, no later than the filing of the appellant's brief in a criminal case and the filing of an appellee's brief in a civil case. See Cir. R. 34(b)(3). The court's calendar is located at <http://www.ca7.uscourts.gov/cal/argcalendar.pdf>. Once scheduled, oral argument is rescheduled only in extraordinary circumstances. See Cir. R. 34(b)(4), (e).

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