In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12908

In re: EDDIE SCOTT,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Middle District of Florida
D.C. Docket No. 5:24-cv-00139-TJC-PRL

Before JORDAN and LUCK, Circuit Judges.

BY THE COURT:

Eddie Scott, proceeding *pro se*, petitions this Court for a writ of mandamus arising out of a closed civil case he filed in the U.S. District Court for the Middle District of Florida. In his mandamus petition, Scott argues that the district court erred in denying his motion to reopen his case. He has also filed a motion to proceed *in forma pauperis* ("IFP") and a motion to expedite.

Scott seeks to file his mandamus petition IFP pursuant to 28 U.S.C. § 1915(a). Section 1915(a) provides that a United States court may authorize the commencement of any proceeding, without prepayment of fees, by a person who submits an affidavit that includes a statement of assets that he possesses and indicates that he is unable to pay such fees. However, we may dismiss an action at any time if it determines that the allegation of poverty is untrue, or if the action or appeal is frivolous. 28 U.S.C. § 1915(e)(2). In this case, because Scott satisfies § 1915(a)'s poverty requirement, we grant his IFP motion.

Mandamus is available "only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion." *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation marks omitted); *United States v. Shalhoub*, 855 F.3d 1255, 1259 (11th Cir. 2017). Mandamus may not be "used as a substitute for appeal, or to control decisions of the [district] court in discretionary matters." *Jackson*, 130 F.3d at 1004 (quoting *In re Estelle*, 516 F.2d 480, 483 (5th Cir. 1975)). When an alternative remedy exists, even if it is unlikely to provide relief, mandamus relief is not proper. *See Lifestar Ambulance*

Serv., Inc. v. United States, 365 F.3d 1293, 1298 (11th Cir. 2004). The petitioner has the burden of showing that they have no other avenue of relief and that their right to relief is clear and indisputable. *Mallard v. United States Dist. Court*, 490 U.S. 296, 309 (1989).

A party may appeal a final judgment of a district court to the court of appeals by filing a notice of appeal within 30 days after the judgment is entered. 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). "[A] postjudgment order is an appealable final decision if the order finally disposes of the question raised by the post-judgment motion and there are no pending proceedings raising related questions." *Acheron Capital, Ltd. v. Mukamal*, 22 F.4th 979, 988 (11th Cir. 2022) (quotation marks omitted) (alterations adopted).

A timely and properly filed notice of appeal is a mandatory prerequisite to appellate jurisdiction. *Holloman v. Mail-Well Corp.*, 443 F.3d 832, 844 (11th Cir. 2006). A notice of appeal "must: (A) specify the party or parties taking the appeal . . . , (B) designate the judgment – or the appealable order – from which the appeal is taken; and (C) name the court to which the appeal is taken." Fed. R. App. P. 3(c)(1). A document may be construed as a notice of appeal when (1) the document serves the functional equivalent of a notice of appeal, and (2) the document "specifically indicate[s] the litigant's intent to seek appellate review." *Rinaldo v. Corbett*, 256 F.3d 1276, 1278-80 (11th Cir. 2001). "If a document filed within the time specified by [Fed. R. App. P.] 4 gives the notice as required by Rule 3, it is effective as a notice of appeal." *Smith v. Barry*, 502 U.S. 244, 248-49 (1992) (finding that an inmate's informal *pro se* brief

could act as the functional equivalent of a notice of appeal). According to Rule 4(d), if a notice of appeal is mistakenly filed in the court of appeals, the clerk should note its date of filing and transmit it to the district court clerk for filing as of the date of filing in the court of appeals. Fed. R. App. P. 4(d).

Here, we deny Scott's mandamus petition, as he had the adequate alternative remedy of appealing the district court's denial of his construed Rule 60(b) motion to reopen his case. *Acheron Capital*, 22 F.4th at 988; *Shalhoub*, 855 F.3d at 1259; *Jackson*, 130 F.3d at 1004. Nevertheless, we liberally construe Scott's mandamus petition as a notice of appeal, as Scott is proceeding *pro se*, his petition asks this Court to reverse the district court's order denying his motion to reopen, and his filing was timely to appeal that order. *See Smith*, 502 U.S. at 248-49; *Rinaldo*, 256 F.3d at 1278-80; 28 U.S.C. § 2107(a); Fed. R. App. P. 3(c)(1), 4(a)(1)(A).

Accordingly, Scott's IFP motion is **GRANTED**. His mandamus petition is **DENIED**, but the Clerk is **DIRECTED** to forward it to the district court to be docketed as a notice of appeal. Scott's motion to expedite is **DENIED** as moot.

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