

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JENNIFER J. JOHNSON,

Plaintiff,

ORDER

v.

12-cv-421-wmc

JAMES R. JOHNAS,

Defendant.

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Plaintiff Jennifer J. Johnson filed this civil action challenging the result of a divorce proceeding in family court. On May 13, 2013, the court dismissed the complaint for lack of subject matter jurisdiction. On July 25, 2013, Johnson filed a notice of appeal. (Dkt. # 7). Observing that her notice of appeal was at least six weeks late, the Seventh Circuit dismissed the appeal for lack of jurisdiction on September 10, 2013. Shortly thereafter, on September 18, 2013, Johnson filed a motion for an extension of time to appeal. (Dkt. # 16). The motion will be denied for reasons outlined briefly below.

In a civil case such as this one, a notice of appeal must be filed “within 30 days after entry of the judgment or order appealed from.” FED. R. APP. P. 4(a)(1)(A). Johnson’s time to appeal expired no later than June 13, 2013.

A district court may extend the time to file a notice of appeal if a party moves for an extension “no later than 30 days after the time prescribed [in Rule 4(a)]” and the motion is accompanied by a showing of good cause or excusable neglect. FED. R. APP. P. 4(a)(5)(A). Because Johnson waited until September to request an extension of time to appeal, Rule 4(a)(5) does not apply here.

Construed generously, Johnson's motion could be considered as one seeking to reopen the time to appeal pursuant to Fed. R. App. P. 4(a)(6). A district court may reopen the time to file an appeal for a brief period of time (14 days) only if all of the following conditions are satisfied:

- A. the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of judgment or order sought to be appealed within 21 days after entry;
- B. the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
- C. the court finds that no party would be prejudiced.

FED. R. APP. P. 4(a)(6). Although Johnson appears to meet the first prerequisite in this instance, the court cannot reopen the time to appeal in this case because Johnson does not satisfy the second condition. In that respect, court records reflect that Johnson did not receive notice of the entry of judgment in this case until July 11, 2013, because she did not provide the court with an accurate address. Johnson had 14 days from that date to file a motion to reopen the time to appeal. Fed. R. App. P. 4(a)(6)(B). Because she did not seek additional time to appeal until September, Johnson is not eligible for relief under Rule 4(a)(6). Therefore, her motion for an extension of time to appeal must be denied.

ORDER

IT IS ORDERED that plaintiff Jennifer J. Johnson's motion for an extension of time to appeal (dkt. # 16) is DENIED.

Entered this 26th day of February, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge