

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

DONALD R. WIELD,

Plaintiff,

v.

JOHN BETT,

Defendant.

ORDER

07-cv-570-jcs

Because Judge Shabaz will be convalescing from shoulder surgery for a period of not less than sixty days beginning February 1, 2008, I have assumed administration of the cases previously assigned to him, including this one, which is before the court on a motion for an extension of time to file a notice of appeal.

A review of the case reveals that in an order dated January 2, 2008, Judge Shabaz granted defendant's motion to dismiss plaintiff's complaint for failure to state a claim upon which relief may be granted. In particular, Judge Shabaz found that the diversion to a release account of 15% of each deposit received into plaintiff's prison account does not deprive him of his constitutional right to due process. Judgment in defendant's favor was entered on January 3, 2008. On January 17, 2008, plaintiff filed a motion for

reconsideration of the entry of judgment. Although Judge Shabaz did not say so expressly, that motion was properly considered as a timely motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. Judge Shabaz denied the Rule 59 motion on January 23, 2008.

The timely filing of a Rule 59 motion resets the clock on the time period within which a party has to appeal from the judgment. Averhorst v. Arrendondo, 773 F.2d 919, 920 (7th Cir. 1985). The date the Rule 59 motion is decided is the date the clock begins again. Therefore, plaintiff has thirty days from January 23, 2008, or until February 22, 2008, in which to file his notice of appeal. However, pursuant to Fed. R. App. P. 4(a)(5), a district court may extend the time to file a notice of appeal upon motion of a party filed no later than 30 days after the time prescribed by Rule 4(a) expires, upon a showing of excusable neglect or good cause.

In support of his motion for an extension of time to file an appeal, plaintiff says that he wants to conduct research “to determine whether [his] appeal may be successful and costs involved,” and that he has “limited law library access.” Neither of these reasons is acceptable to show excusable neglect or good cause for extending the time to file a notice of appeal. Every person considering the decision whether to appeal a district court’s decision to dismiss his or her case must consider whether the appeal may be successful. Moreover, plaintiff should be aware already that because he is subject to the Prison Litigation Reform

Act, he will be responsible for paying the \$455 fee for filing an appeal, even if his request for leave to proceed in forma pauperis on appeal is granted. Finally, because plaintiff filed a timely Rule 59 motion, his deadline for filing a notice of appeal which was previously February 4, 2008, is now February 22, 2008. This means he has had nearly three extra weeks to visit the law library to investigate whether it would be prudent to appeal Judge Shabaz's disposition of his case. In sum, I conclude that plaintiff has shown neither excusable neglect nor good cause for extending the time to file a notice of appeal.

ORDER

IT IS ORDERED that plaintiff's motion for an enlargement of time to file a notice of appeal in this case is DENIED.

Entered this 19th day of February, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge