

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

JOSE R. PADILLA,

Plaintiff,

v.

DALIA SULIENE,

Defendant.

ORDER

11-cv-425-bbc

On May 25, 2012, I granted summary judgment in this case to defendant Dalia Suliene and the clerk's office entered judgment in favor of defendant Suliene on May 29, 2012. On July 25, 2012, plaintiff filed a notice of appeal dated July 20, 2012, which was 22 days beyond the expiration of the appeal period. The Court of Appeals for the Seventh Circuit dismissed plaintiff's appeal on October 9, 2012 as untimely.

Now plaintiff has filed a motion to reopen the time to file an appeal. A district court may reopen the time for filing a notice of appeal for a period of 14 days after the date when its order to open is entered upon motion, if the motion is filed within 180 days of the entry of judgment or within 14 days after the moving party receives notice, if the court finds that the party did not receive notice of the entry of judgment from the clerk within 21 days of its entry and if no party would be prejudiced by reopening the time for appeal. Fed. R. App. P. 4(a)(6). In his affidavit, plaintiff states that he received the judgment in this case on June

27, 2012. I note that plaintiff provides no explanation or evidence to support why he did not receive the May 29 judgment until June 27. Nevertheless, I accept plaintiff's assertion that he did not receive notice that judgment was entered in this case until June 27 and I find that no party will be prejudiced. However, as stated above, Rule 4(a)(6)(B) says that a motion to reopen the time to file an appeal must be 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." Plaintiff's motion to open the time to appeal is dated October 16, 2012, which is 111 days after he received the judgment in this case. This is well beyond the 14 days that Rule 4 allows. Accordingly, plaintiff's motion to reopen the time to file an appeal will be denied.

ORDER

IT IS ORDERED that plaintiff Jose Padilla's motion to reopen the time to file an appeal, dkt. #94, is DENIED.

Entered this 2d day of November, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge