

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ALEXANDER N. GARCIA,

Plaintiff - Appellant,

v.

JOE ORTIZ, Executive Director of D.O.C., in his official capacity; RORICK, Correctional Officer, (CTCF), in their official capacity; JOHNSON, Correctional Officer, (CTCF), in their official capacity; H. WILLIAMS, Correctional Officer, (CTCF), in their official capacity; CELLA, Sargent, Correctional Officer, (CTCF), in their official capacity; MULAY, Sargent Correctional Officer, (CTCF), in their official capacity; SHEILA, (Doe), Nurse Practitioner, (CTCF), in her official capacity; JAMES E. ABBOTT, Warden, (CTCF), in his official capacity; KEVIN MILYARD, Associate Warden, (CTCF), in his official capacity; TANYA GARCIA, Social Worker, (ACC), in her official capacity, MARYANN ALESSI, Nurse Practitioner, (ACC), in her official capacity; Dr. BAUTISTA, (ACC), in their official capacity; DELORES MONTOYA, Health Service Admin., (ACC), in her official capacity; PATRACIO MANZANARES, Major, (ACC), in their official capacity; MASSEE, Major, (ACC), in their official capacity; CARL ZENNON, Warden, (ACC), in his official capacity,

Defendants - Appellees.

No. 07-1359
(D.C. No. 06-cv-01086-ZLW)

ORDER

Filed September 6, 2007

Before **LUCERO, GORSUCH, and HOLMES**, Circuit Judges.

This court lacks jurisdiction over this appeal because the notice of appeal was not filed timely.

“A timely notice of appeal is both mandatory and jurisdictional.” *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1239 (10th Cir. 2006) (quotation omitted). In a civil case, a notice of appeal “must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.” Fed. R. App. P. 4(a)(1)(A). If a separate judgment is required by Federal Rule of Civil Procedure 58, but no judgment is entered, the order is deemed entered for purposes of Rule 4(a) 150 days from entry of the order on the civil docket. *Id.* 4(a)(7)(A); Fed. R. Civ. P. 58(b)(2)(B). Although Plaintiff is proceeding *pro se*, he still must comply with the time requirements in the procedural rules. *Odgen v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994).

Here, Plaintiff has attempted to appeal district court orders dismissing his case entered August 18, 2006, and denying his motion for reconsideration entered October 30, 2006. He did not file a notice of appeal of these orders until August 29, 2007.

Accordingly, the notice of appeal is untimely as to both orders.

Plaintiff asks this court to accept his untimely appeal under the excusable neglect

exception to the jurisdictional time limits. Plaintiff obviously received notice of the entry of the dismissal order because he filed a motion for reconsideration of that order. But Plaintiff asserts that he never received notice of the order denying his motion for reconsideration. This argument must be rejected, however, because “[the courts] ha[ve] no authority to create equitable exceptions to jurisdictional requirements,” even for *pro se* prisoners. *United States v. Cos*, – F.3d. –, 2007 WL 2372376, at *7 (10th Cir. Aug. 21, 2007) (quoting *Bowles v. Russell*, 127 S.Ct. 2360, 2366 (2007) (alteration in original)).

Accordingly, this appeal is DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith
Counsel to the Clerk