

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

January 4, 2011

FOR THE TENTH CIRCUIT

**Elisabeth A. Shumaker
Clerk of Court**

ANTHONY J. BRODZKI,

Plaintiff - Appellant,

v.

NEW MEXICO STATE PATROL,

Defendant - Appellee.

No. 10-2264
(D.C. No. 1:10-CV-00767-MCA-WDS)

ORDER

Before **HARTZ, O'BRIEN**, and **HOLMES**, Circuit Judges.

Plaintiff Anthony Brodzki appeals the district court's order and final judgment dismissing his civil rights case and imposing filing restrictions. This court entered an order to show cause as to why the appeal should not be dismissed because the notice of appeal appeared to have been untimely filed. Mr. Brodzki filed a response. Upon consideration, we now dismiss this appeal.

“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); *see also Bowles v. Russell*, 551 U.S. 205, 213-15 (2007). In a civil case when the United States is not a party, 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). Although Mr. Brodzki is proceeding pro se, he still must comply with the same procedural requirements that govern other litigants. *Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007); *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994).

In this case, the district court’s final order and judgment were entered October 29, 2010. To be timely, the notice of appeal must have been filed by November 29, 2010. See Fed. R. App. P. 4(a)(1)(A); 26(a)(1)(C) (computing time to file when deadline falls on weekend). The notice was not filed until December 3, 2010. Mr. Brodzki argued in his response to the order to show cause that he tried to comply with the notice deadline, but it is not his responsibility if the mail service was slow, resulting in the untimely filing of his notice of appeal. On the contrary, the notice itself states that it was not mailed until after the deadline had already passed.

Because the notice of appeal was filed untimely, we dismiss this appeal for lack of appellate jurisdiction. We also deny Mr. Brodzki’s motion for leave to proceed in forma pauperis on appeal and direct him to pay the \$455.00 appellate filing fee to the district court immediately.

Entered for the Court,
ELISABETH A. SHUMAKER, Clerk,



by: Lara Smith
Counsel to the Clerk