

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 27, 2014

Elisabeth A. Shumaker  
Clerk of Court

LINDSAY O'BRIEN QUARRIE,

Plaintiff - Appellant,

v.

NEW MEXICO INST. OF MINING &  
TECH.; BHASKAR MAJUMDAR;  
LORIE LIEBROCK; KENNETH (KEN)  
MINSCHWANER; SCOTT TEARE;  
DANIEL LOPEZ; PETER GERITY,

Defendants - Appellees.

No. 14-2018  
(D.C. No. 2:13-CV-00349-MV-SMV)

ORDER

Before **GORSUCH**, **MATHESON**, and **BACHARACH**, Circuit Judges.

Pro se plaintiff Lindsay O'Brien Quarrie appeals the district court's order denying the plaintiff's motion to reconsider the court's earlier order denying the plaintiff's motion for a preliminary injunction. The notice of appeal was filed electronically through the district court's electronic filing system one day after the deadline to file a notice of appeal expired. This court challenged whether we have jurisdiction to consider the appeal. The appellant to filed a response. Upon careful consideration, we conclude that this court lacks jurisdiction to consider the 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). A

notice of appeal in a civil case must be filed within 30 days after the judgment or order appealed from is entered. Fed. R. App. P. 4(a)(1)(A). Although the appellant is proceeding *pro se*, he 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 order denying the plaintiff's motion to reconsider was entered on January 6, 2014. To be timely, the notice of appeal should have been filed by February 5, 2014. The notice was filed on February 6, 2014, one date after the filing deadline expired.

The plaintiff's response to the court's order to show cause cannot save this untimely appeal. The United States Supreme Court has made clear that federal courts "ha[ve] no authority to create equitable exceptions to jurisdictional requirements." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The appellant's only potential avenue for relief from the untimely filing was in the district court, but he did not pursue this remedy. 28 U.S.C. § 2107(c); Fed. R. App. P. 4(a)(5). As a result, "[t]he time limit has run and we are without jurisdiction under the facts of this case." *Jenkins v. Burtzloff*, 69 F.2d 460, 464 (10th Cir. 1995).

The appeal is dismissed for lack of jurisdiction. All pending motions are denied as moot.

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk



by: Lara Smith  
Counsel to the Clerk