FILED
United States Court of Appeals
Tenth Circuit

October 9, 2014

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

EMIL MARSHON SIMON,

Plaintiff - Appellant,

v.

GRAFTON, INC.; BIOMUNE COMPANY,

Defendants - Appellees.

No. 14-3174
(D.C. No. 2:12-CV-02796-JAR)

EMIL MARSHON SIMON,

Plaintiff - Appellant,

v.

BIOMUNE COMPANY; GRAFTON, INC.

Defendants - Appellees.

No. 14-3175
(D.C. No. 2:12-CV-02797-JAR)

ORDER

Before **KELLY**, **LUCERO** and **MATHESON,** Circuit Judges.

These appeals are consolidated for procedural purposes. This court lacks jurisdiction because the notices of appeal were filed late.

In the consolidated cases below, judgment was entered on July 23, 2014, and the notices of appeal were filed more than 30 days later, on August 24, 2014.

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In a civil case, in which the United States is not a party, a notice of appeal must be filed within 30 days of entry of the judgment being appealed. *See* 28 U.S.C. § 2107(a) (a notice of appeal in a civil matter must be filed within 30 days of entry of judgment); Fed. R. App. P. 4(a)(1)(A) (same). A timely notice of appeal in a civil case is both mandatory and jurisdictional. *See Bowles v. Russell*, 551 U.S. 205, 209, 213 (2007).

Even if someone in the circuit clerk's office told the plaintiff he had 45 days in which to appeal as he contends, this does not excuse the late filing. *See Kadonsky v. United States*, 221 Fed. Appx. 749 (10th Cir. 2007) (unpublished) (even if the unique circumstances doctrine were still viable and applied to the rules establishing the time to file an appeal, the plaintiff has not shown that he relied on the assurances of a *judicial officer*) (emphasis added). A plain reading of Fed. R. App. P. 4(a)(1) notified the plaintiff that he had 30 days in which to appeal. His pro se status does not does not excuse the late filing. *See Fields v. Romer*, 2000 WL 1616394 *2 (10th Cir. 2000) (unpublished).

Moreover, this court may not extend the time to appeal. *See* Fed. R. App. P. 26(b)(1) (only the district court may extend the time to appeal and that authority is limited by Fed. R. App. P. 4(a)(5)).

Because the appeals were filed more than 30 days after entry of judgment, this court lacks jurisdiction. **APPEALS DISMISSED**.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

by: Ellen Rich Reiter
Jurisdictional Attorney