UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-6947

RONALD LEE MCCAULEY,

Plaintiff - Appellant,

v.

LIEUTENANT RILEY, HFDC; SERGEANT ROSEMARY SANDERS, HFDC; HEAD NURSE PAULA NLN, HFDC,

Defendants – Appellees,

and

HILL FINKLEA DETENTION CENTER; BERKELEY COUNTY DETENTION CENTER,

Defendants.

No. 11-7203

RONALD LEE MCCAULEY,

Plaintiff - Appellant,

v.

LIEUTENANT RILEY, HFDC; SERGEANT ROSEMARY SANDERS, HFDC; HEAD NURSE PAULA NLN, HFDC,

Defendants – Appellees,

and

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

HILL FINKLEA DETENTION CENTER, a/k/a Berkeley County Detention Center,

Defendant.

Appeals from the United States District Court for the District of South Carolina, at Greenville. Henry M. Herlong, Jr., Senior District Judge. (6:10-cv-01700-HMH)

Submitted: December 13, 2011 Decided: December 22, 2011

Before WILKINSON and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

No. 11-6947 dismissed; No. 11-7203 affirmed by unpublished per curiam opinion.

Ronald Lee McCauley, Appellant Pro Se. Joseph Camden Wilson, PIERCE, HERNS, SLOAN & MCLEOD, Charleston, South Carolina; Nosizi Ralephata, John Smith Wilkerson, III, TURNER, PADGET, GRAHAM & LANEY, PA, Charleston, South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ronald Lee McCauley appeals the district court's order granting summary judgment to the Defendants (No. 11-6947) and the district court's order denying his request to reopen the appeal period (No. 11-7203). We grant the Appellees' motion to dismiss in the former appeal and affirm the district court's order in the latter.

Parties to a civil action are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

The district court's judgment was entered on the docket on March 28, 2011. McCauley's notice of appeal was not filed until 108 days later, on July 14, 2011. Along with his untimely notice of appeal, McCauley filed a motion to extend the appeal period. McCauley claimed that he had not received the district court's judgment until that very day. McCauley had apparently been transferred between facilities in the South Carolina Department of Corrections ("SCDC") in late January 2011 but had not notified the Clerk of his change of address until

July 2011. The copy of the district court's judgment sent to McCauley in March 2011 had been returned undeliverable. McCauley contends that any mail addressed to him with his inmate number should have been forwarded to him within the SCDC system.

An extension of the appeal period pursuant to Fed. R. App. P. 4(a)(5) was not available to McCauley because of the lateness of his motion. Thus, the district court properly considered McCauley's motion as one to reopen the appeal period pursuant to Fed. R. App. P. 4(a)(6). Under that subsection, the district court may reopen the appeal period for fourteen days if it finds that: (1) a party entitled to notice of entry of judgment did not receive notice within twenty-one days after judgment, (2) the party moved to reopen the appeal period either within 180 days of judgment or within fourteen days of receiving notice of the judgment, and (3) no party would be prejudiced. Fed. R. App. P. 4(a)(6). Rule 4(a)(6) is permissive, and allows a district court to deny a motion arising under that rule even if the movant meets the rule's three requirements. See Benavides v. Bureau of Prisons, 79 F.3d 1211, 1214 (D.C. Cir. 1996); In re Jones, 970 F.2d 36, 39 (5th Cir. 1992).

We conclude that the district court did not abuse its discretion in denying McCauley's motion. McCauley would have received timely notice of the district court's judgment if he had properly apprised the Clerk of his change of address. We

therefore affirm the district court's order denying McCauley's motion to reopen the appeal period. Accordingly, McCauley's appeal of the district court's judgment is untimely and we lack jurisdiction to resolve it. The Appellees' motion to dismiss McCauley's appeal of the district court's judgment is granted. McCauley's motions for appointment of counsel are denied. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 11-6947 DISMISSED
No. 11-7203 AFFIRMED