UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-1634

FRANCYNE J. COOPER,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE, Commissioner of Social Security,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Arenda Wright Allen, District Judge. (4:10-cv-00110-AWA-TEM)

Submitted: August 2, 2012 Decided: August 9, 2012

Before GREGORY, DUNCAN, and AGEE, Circuit Judges.

Dismissed in part and remanded in part by unpublished per curiam opinion.

Francyne J. Cooper, Appellant Pro Se. Lawrence Richard Leonard, Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Francyne J. Cooper seeks to appeal the district court's December 22, 2011 order adopting the magistrate judge's recommendation and granting summary judgment to the Commissioner of Social Security in her civil action. The Commissioner has filed a motion to dismiss the appeal, contending that Cooper's May 14, 2012 notice of appeal was untimely filed.

We disagree. On January 4, 2012, Cooper filed, pro se, a document in the district court that was docketed as a "Submission to the court by plaintiff (now pro se)" (the "Submission"). In our view, the best reading of the Submission construes it as a motion requesting the district court to reconsider its ruling, pursuant to Fed. R. Civ. P. 60.

Because the district court has not yet ruled on the pending Submission, Cooper's May 14 notice of appeal — while not untimely — is premature. See 28 U.S.C. § 1291 (2006).

We therefore deny the Commissioner's motion to dismiss this appeal as untimely and instead dismiss it as premature. We remand the case to the district court so that it may rule on Cooper's pro se Submission, properly construed as a Rule 60 motion to reconsider. Of course, should the district court rule adversely on Cooper's pro se Submission, she may at that time file a timely notice of appeal from the district court's judgment entered on December 22, 2011, the order denying her

Submission, or both. 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.

DISMISSED IN PART
AND REMANDED IN PART