

No. 13-5186
File Name: 13a0392n.06

FILED
Apr 18, 2013
DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ERIC DEWAYNE SMITH,)
)
Plaintiff-Appellant,)
)
v.)
)
HAMILTON COUNTY, TENNESSEE;)
DEBBIE MORRIS, With I/A; JIM)
HAMMOND; RICHARD SHOCKLEY;)
CAPT SWOPE; ROBERT JOHNSON,)
)
Defendants,)
)
and)
)
OFFICER OWENS; OFFICER DANIEL,)
)
Defendants-Appellees.)
)

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE EASTERN
DISTRICT OF TENNESSEE

Before: MARTIN, GILMAN, and KETHLEDGE, Circuit Judges.

PER CURIAM. This Court entered an order on March 5, 2013, remanding this appeal to the district court for the limited purpose of determining whether Eric Dewayne Smith’s late notice of appeal should be treated as a motion for an extension of time to file an appeal, pursuant to Federal Rule of Appellate Procedure 4(a)(5), and, if appropriate, for a ruling on the motion. The district court issued an order on March 21, 2013, denying Smith permission to file a delayed appeal. It determined that Smith had failed to show excusable neglect or good cause.

The documents before the Court indicate that the district court entered its judgment on January 2, 2013. The notice of appeal filed on February 7, 2013 was late. *See* Fed. R. App. P. 4(a) and 26(a). Compliance with Federal Rule of Appellate Procedure 4(a) is a mandatory prerequisite

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that this Court may neither waive nor extend. *Bowles v. Russell*, 551 U.S. 205, 214 (2007); *Ultimate Appliance CC v. Kirby Co.*, 601 F.3d 414, 415–16 (6th Cir. 2010). Federal Rule of Appellate Procedure 26(b) specifically provides that this Court may not enlarge the time for filing a notice of appeal except as authorized by Rule 4. *See* Fed. R. App. P. 26(b). Although the exceptions authorized in Rule 4 include excusable neglect and good cause, *see* Federal Rule of Appellate Procedure 4(a)(5)(A), Smith has failed to demonstrate either, as the district court concluded.

Accordingly, it is ordered that the appeal is dismissed.