

2020 WL 7062673

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United States Court of Appeals, Sixth Circuit.

Mary Barley MCBRIDE, et al., Plaintiffs,
and
Brandon Resch, Interested Party-Appellant,
v.
MICHIGAN DEPARTMENT OF CORRECTIONS,
et al., Defendants-Appellees.

No. 20-1518

|
FILED October 16, 2020

Attorneys and Law Firms

Brandon Resch, Carson City, MI, pro se.

Scott Allen Mertens, Office of the Attorney General,
Lansing, MI, for Defendant-Appellee

Before: STRANCH, THAPAR, and READLER Circuit
Judges.

ORDER

*1 “Every federal appellate court has a special obligation to satisfy itself ... of its own jurisdiction” *Alston v. Advanced Brands & Importing Co.*, 494 F.3d 562, 564 (6th Cir. 2007) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 95 (1998)). Generally, in a civil case where the United States, a United States agency, or a United States officer or employee is not a party, a notice of appeal must be filed within thirty days after the judgment or order appealed from is entered. 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A).

This is a class action involving “all deaf or hard of hearing inmates in the custody of the Michigan Department of Corrections” (“MDOC”). On March 9, 2018, the district court entered an opinion and order granting in part the plaintiffs’ motion for summary judgment. A year later, the parties filed a joint motion for final approval of class action settlement and their proposed settlement agreement. The district court held a

fairness hearing and, on March 29, 2019, entered an order approving the settlement agreement and retaining jurisdiction to enforce its terms.

On August 12, 2019, Brandon Resch filed a motion to enforce the settlement agreement. On March 25, 2020, the district court denied Resch’s motion. Any notice of appeal from that ruling was due to be filed on or before April 24, 2020. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A), 26(a).

As a prisoner, Resch benefits from the prison-mailbox rule, under which his notice of appeal is deemed to have been filed on the date that he placed it in the institution’s internal mail system. *See* Fed. R. App. P. 4(c); *Houston v. Lack*, 487 U.S. 266, 275-76 (1988); *Brand v. Motley*, 526 F.3d 921, 925 (6th Cir. 2008). A prisoner may invoke the rule by filing a notarized statement, or declaration under penalty of perjury, providing the date on which the prisoner placed the filing in the prison’s internal mail system and stating that first-class postage was prepaid. Fed. R. App. P. 4(c)(A). Resch signed his notice of appeal on April 2, 2020. However, since the district court did not receive it until May 8, 2020, we ordered Resch to show timely filing of his notice of appeal as set forth in Rule 4(c). Resch failed to respond to our order by the July 17, 2020, deadline.

Resch cannot benefit from the prison mailbox rule. Although the notice of appeal is dated April 2, 2020, dating the notice does not constitute a notarized statement or declaration under penalty of perjury that the notice was placed in the prison mail on that date with postage prepaid. The envelope in which Resch’s notice of appeal was mailed to the district court is postmarked May 8, 2020. This postmark is the best available evidence of the date that the notice of appeal was delivered to prison authorities with postage prepaid. Therefore, we find that the notice of appeal is untimely filed.

Compliance with the statutory deadline in § 2107(a) is a mandatory jurisdictional prerequisite that this court may not waive. *Hamer v. Neighborhood Hous. Servs.*, 138 S. Ct. 13, 21 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Resch’s failure to timely file a notice of appeal deprives this court of jurisdiction.

*2 It is ordered that appeal No. 20-1518 is **DISMISSED** for lack of jurisdiction.

We note, however, that Resch filed a “Request for Enlargement of Time to File Notice of Appeal” in the district court on April 20, 2020. A document may be construed as a notice of appeal if it meets the

requirements of a notice of appeal and clearly evinces the party's intent to seek appellate review. *McMillan v. Barksdale*, 823 F.2d 981, 983 (6th Cir. 1987). The "Request for Enlargement of Time to File Notice of Appeal" explicitly states that "Brandon Resch is appealing the order in this matter at ECF No. 154"—the March 25, 2020 order. And it is postmarked April 20, 2020. It complies with the filing requirement of Federal Rule of Appellate Procedure 3(a), the content requirement of Rule 3(c), and the timing requirement of Rule 4(a). Therefore, the April 20, 2020, "Request for Enlargement of Time to File Notice of Appeal" should be deemed a notice of appeal.

It is therefore ordered that the district court docket the April 20, 2020, "Request for Enlargement of Time to File Notice of Appeal" as a notice of appeal. A copy of that document should be forwarded to this court by the district court as provided by Federal Rule of Appellate Procedure 3(d)(1), and this court will advise the parties of the new appeal number when it is docketed.

All Citations

Not Reported in Fed. Rptr., 2020 WL 7062673