

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-30522
Summary Calendar

MARY EVANS and GLEN EVANS,

Plaintiffs-Appellants,

versus

WAL-MART STORES, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 00-852-D-3

January 22, 2003

Before BARKSDALE, DEMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

In this matter, the presiding magistrate judge entered a final judgment dismissing all of appellants' claims on summary judgment. Seventeen days after the final judgment was entered, appellants mailed a "Motion for Review" and an accompanying legal memorandum to the Louisiana Fifth Circuit Court of Appeal. A notice of appeal was not filed with the United States District Court for the Western District of Louisiana at that time,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

although the presiding magistrate judge was sent a copy of the Motion for Review. It is obvious that the filing of the Motion for Review in the Louisiana state court does not constitute a filing of a notice of appeal.

After the period for filing a notice of appeal had expired, pursuant to Rules 3, 4, Fed. R. App. P., appellants filed a motion to extend or reopen the time for filing a notice of appeal with the federal district court. This was the first filing they made in the district court following the magistrate judge's final judgment. The magistrate judge, unconvinced by appellants' claim of "excusable neglect," denied the motion as well as a subsequent motion for reconsideration. Appellants then filed a notice of appeal from these rulings.

On appeal, appellants do not set out how or why the magistrate judge abused its discretion in denying the motion to extend time to file notice to appeal, notwithstanding that it is the only issue properly before us as no timely notice of appeal was filed with respect to the summary judgment granted by the magistrate judge. Rather, appellants attempt to argue the merits of the summary judgment motion. Appellants have failed to show that the magistrate judge abused its discretion in denying an extension of time to file the notice of appeal.

Indeed, our review of the record clearly shows that the magistrate judge was correct in its ruling. Thus, we have no jurisdiction to review the merits of the summary judgment issued

by the magistrate judge inasmuch as there was no timely notice of appeal filed with the clerk of the district court with respect to such judgment. We therefore find appellants' arguments devoid of merit.

The orders properly before us on appeal are AFFIRMED and we have no jurisdiction to review the magistrate judge's decision with respect to summary judgment.