

April 7, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 04-51077
Summary Calendar

In The Matter Of: JUAN JOSE LUNA; KELLY LYNN GREEN,

Debtors.

JOHN T. FLEMING,

Appellant,

versus

LIEF M. CLARK, United States Bankruptcy Judge for the
Western District of Texas,

Appellee..

Appeal from the United States District Court for
the Western District of Texas
(USDC No. 5:03-CV-472)

Before REAVLEY, JOLLY, HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Fleming's notice of appeal was not timely. In civil cases, a notice of appeal must be filed with the district clerk within thirty days after the order appealed from is issued. FED. R. App. P. 4(a)(1)(A). If one of the parties to the suit is the United States or its officer or agency, then the time period for filing an appeal is extended to sixty days. FED. R. App. P. 4(a)(a)(B). The government argues that it is not actually a party to the suit, and that the thirty-day deadline should apply. However, even under the sixty-day deadline, Fleming's notice of appeal was not timely. The order that Fleming is appealing was entered on July 19, 2004. Sixty days thereafter would be September 17, 2004. Fleming's notice of appeal was not filed until September 24, 2004, and thus, this court does not have jurisdiction to hear the appeal. See Barber v. Security Benefit Life, 936 F.2d 210, 212 (5th Cir. 1991). DISMISSED.