

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2162  
Conference Calendar

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GRALYN A. ANCAR,

Plaintiff-Appellant,

versus

SARA PLASMA, INC.,  
Et Al.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-91-3199  
- - - - -  
(November 1, 1993)

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:\*

This Court must determine if it has appellate jurisdiction on its own motion, if necessary. Williams v. Brown & Root, Inc., 828 F.2d 325, 327 (5th Cir. 1987). A notice of appeal in a civil case is required to be filed within 30 days of the date of entry of the judgment. Fed. R. App. P. 4(a). Ancar filed his notice of appeal on January 28, 1993, over 30 days from the entry of the judgment dismissing his case on November 17, 1992. However,

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Ancar's Rule 60(b) motion for relief from the judgment was served on December 1, within ten days from entry of the judgment, and so it is actually considered as a Rule 59(e) motion and it tolls the appeal delays. See Lavespere v. Niagara Machine and Tool Works, Inc., 910 F.2d 167, 173 (5th Cir. 1990), cert. denied, 1993 WL 248287 (1993).

That does not end the inquiry, however. The order denying the motion for relief was entered on December 28, 1992. Ancar had 30 days from December 28 to file a notice of appeal from the original judgment of dismissal and the order denying his motion for relief. Ancar filed his notice of appeal on January 28, 1993, which is the thirty-first day, not the thirtieth day. This Court does not have appellate jurisdiction to review the dismissal of his case or the denial of his motion for relief.

APPEAL DISMISSED.