

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3325
Conference Calendar

LISA H. HAWKINS ET AL.,

Plaintiffs-Appellants,

versus

TOM E. MCHUGH, Mayor of the City
of BATON ROUGE, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. CA-91-1152-B-MI
- - - - -
(December 15, 1993)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

The plaintiffs appeal the district court's denial of their Fed. R. Civ. P. 4(a)(5) motion to extend the time for appeal.

Because the plaintiffs filed their motion to extend time for appeal within the thirty days after expiration of the time for appeal, the district court could grant the motion upon a finding of excusable neglect. See Latham v. Wells Fargo Bank, 987 F.2d 1199, 1202 (5th Cir. 1993). "[T]he excusable neglect standard is a strict one and . . . a district court's decision to grant or

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

deny relief under Rule 4(a)(5) is reviewed only for abuse of discretion." Id.

Plaintiffs argue that the misconduct of former local counsel constituted "unique circumstances" sufficient to warrant relief under Rule 4(a)(5). Plaintiffs argue further that they relied in good faith on former local counsel, who failed to properly advise them that the case was dismissed.

A loose construction of the additional 30-day period under Rule 4(a)(5) would defeat the purpose of Rule 4(a)(1) by converting the time for appeal from 30 to 60 days. See Allied Steel v. City of Abilene, 909 F.2d 139, 143 (5th Cir. 1990). Excusable neglect cannot generally be shown by pointing to "extraordinary" circumstances, including the errors of counsel, because it is an easy argument to raise and quickly erodes the strict application of the rule. Id.

The plaintiffs' reliance on Mennen Co. v. Gillette Co., 719 F.2d 568 (2nd Cir. 1983), is misplaced. In Mennon, the Second Circuit held that, although a failure to file a notice of appeal because of counsel's negligence was not excusable, as in the instant case, counsel's failure to file such notice was excusable there because the clerk failed to notify trial counsel, as directed by the judge. See id. at 570-71.

It follows that if the plaintiffs cannot point to the errors of counsel, plaintiffs cannot point to the errors of counsel associated by counsel. The district court's ruling was therefore not an abuse of discretion.

AFFIRMED.