

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3339
Conference Calendar

JAMES HAWTHORNE,

Plaintiff-Appellant,

versus

STATE OF LOUISIANA and
JEROME M. WINSBERG, Criminal
District Court Judge,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. C.A. 93-666 D
- - - - -

August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

"This Court must examine the basis of its jurisdiction, on its own motion if necessary." Hamilton v. Robertson, 854 F.2d 740, 741 (5th Cir. 1988).

The district court entered final judgment dismissing this civil rights case on April 27, 1993. James Hawthorne mailed a document to this Court which gave notice of appeal on the date it was noted by the clerk of this Court, May 5, 1993. See Fed. R.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

App. P. 4(a)(1). Also within the document, Hawthorne requested the reopening of his case and the relief previously requested. Liberally construed, this portion of the document is a post-judgment motion, a motion not yet ruled on by the district court.

A timely Fed. R. Civ. P. 59(e) motion nullifies a notice of appeal filed before entry of the order disposing of the motion. Fed. R. App. P. 4(a)(4). The Court must treat a motion which seeks relief within the scope of Rule 59(e) and which is served within ten days of entry of judgment as a Rule 59(e) motion for purposes of Rule 4(a)(4). See Harcon Barge Co., Inc. v. D & G Boat Rentals, Inc., 784 F.2d 665, 667 (5th Cir.) (en banc), cert. denied, 479 U.S. 930 (1986). Where the action itself has never been served, such as in the present case, a Rule 59(e) motion is timely and effective if filed within the ten days. See Craig v. Lynaugh, 846 F.2d 11, 13 (5th Cir. 1988).

Hawthorne's document seeks relief within the scope of Rule 59(e), and it was filed in the district court within ten days of entry of judgment. See Fed. R. Civ. P. 6(a). The motion nullified Hawthorne's notice of appeal. Therefore, this Court is without jurisdiction. See Fed. R. App. P. 4(a)(4).

DISMISSED.