

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20651
Summary Calendar

IN THE MATTER OF: TIGHE ANTHONY and
NANCY LEE MERELLI,
Debtors.

FRANK MCINTYRE,
Appellant,

v.

NANCY LEE MERELLI and TIGHE ANTHONY,
Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA H 94 1752)

(April 14, 1995)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

The district court correctly dismissed appellant Frank McIntyre's appeal. The bankruptcy court judgment appealed from was entered on October 23, 1992. Under Bankruptcy Rule 8002, a notice

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

of appeal must be filed within ten days of the date of entry of the judgment. The ten-day period may be extended once, for a maximum of twenty days, upon a showing of excusable neglect. McIntyre's motion for leave to appeal was filed more than five months after the entry of judgment by the bankruptcy court. McIntyre argued that he lacked actual notice of the entry of the bankruptcy court's judgment. But, as the district court correctly pointed out, McIntyre's lack of notice of the entry of judgment is irrelevant. Under Bankruptcy Rule 9022, lack of notice of the entry of a court order does not affect the time to appeal or authorize the court to relieve a party for failure to file a timely appeal. We agree with the district court that Bankruptcy Rule 9022 should be construed in the same manner as Fed. R. Crim. P. 49(b), i.e., it is mandatory and precludes out-of-time appeals. See United States v. Awalt, 728 F.2d 704, 705 (5th Cir. 1984).

The district court's order dismissing McIntyre's appeal is AFFIRMED.