

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20559
Summary Calendar

VICTOR LEE HALL,

Plaintiff-Appellant,

versus

THERESA A. LEGG; E.D. MURDOCK,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. 96-CV-3719
- - - - -

July 29, 1999

Before KING, Chief Judge, HIGGINBOTHAM and EMILIO M. GARZA,
Circuit Judges.

PER CURIAM:*

This court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). An examination of the record in this case discloses that the notice of appeal is ineffective.

Victor Lee Hall, prisoner #624871, seeks to appeal the district court's dismissal of his 42 U.S.C. § 1983 complaint. The final judgment was entered on April 23, 1998. On April 22, 1998, Hall filed a motion for new trial and amendment of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

judgment. On June 19, 1998, after being granted an extension of time in which to file his appeal, Hall filed his notice of appeal. The district court has not ruled on the motion for new trial and amendment of judgment.

Rule 4(a)(4), Fed. R. App. P., provides that, if a timely motion is made pursuant to Fed. R. Civ. P. 59, a notice of appeal filed after entry of the judgment, but before disposition of the motion, is ineffective until the entry of the order disposing of the motion. A motion for new trial is a Rule 59(b) motion and a motion to alter or amend judgment is a Rule 59(e) motion. Hall's motion was filed within the 10-day limit for Rule 59 motions. See Fed. R. Civ. P. 59(b), (e).

As the Rule 59 motion has not yet been disposed of, the petitioner's notice of appeal is ineffective. See Burt v. Ware, 14 F.3d 256, 260-61 (5th Cir. 1994). Accordingly, the case must be remanded, and the record returned to the district court, for consideration of the outstanding motion.

REMANDED.