

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20511
Summary Calendar

CURTIS B. STITH,

Plaintiff-Appellant,

VERSUS

TOGO D. WEST, JR, Secretary of Veterans Affairs;
DEPARTMENT OF VETERANS AFFAIRS,

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas, Houston Division
(H-95-CV-1058)

January 24, 2001

Before EMILIO M. GARZA, STEWART and PARKER, Circuit Judges.

PER CURIAM:*

Curtis B. Stith appeals the dismissal of his employment discrimination suit. We dismiss the appeal for lack of jurisdiction.

On October 13, 1999, the district court granted defendants'

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

motion to dismiss Stith's action and entered judgment. Stith filed a motion for new trial on November 10, 1999, which was timely because it was filed within the extension of time granted by the district court for filing such motion. The district court denied the motion for new trial on December 17, 1999. Stith filed a motion to reinstate on January 3, 2000, which the district court denied on March 30, 2000. Stith filed a second motion for new trial on April 7, 2000, based on substantially the same grounds as urged in the November 10 motion. The district court denied this renewed motion on May 25, 2000. Stith filed his notice of appeal on June 12, 2000.

Because an officer or agency of the United States is a party to this case, the notice of appeal was timely if filed within 60 days after the entry of the judgment or order from which the appeal is taken. FED.R.CIV.P 4(a)(1). This 60-day period was tolled by Stith's first Motion for New Trail and the appeal period commenced to run again when the order denying the motion was entered. FED.R.CIV.P. 4(a)(4). However, Stith's second motion, based upon substantially the same grounds as urged in the earlier motion, was successive and did not interrupt the running of the time for appeal. *Charles L.M. v. Northeast Indep. Sch. Dist.*, 884 F.2d 869, 870 (5th Cir. 1989). Stith's notice of appeal was outside the 60-day time period for challenging the judgment of dismissal entered on October 13, 1999. He has validly appealed only from the May 25,

2000 order denying his second motion for new trial as untimely. Because he does not challenge the district court ruling that his second motion for new trial was untimely, he has preserved no issue for our review. *See id.* We therefore dismiss the appeal.

DISMISSED.