

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-30108
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 3, 2020

Lyle W. Cayce
Clerk

MELISSA DURHAM,

Plaintiff-Appellant

v.

AMIKIDS, INCORPORATED; AMIKIDS BATON ROUGE,
INCORPORATED,

Defendants-Appellees

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:17-CV-343

Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Melissa Durham, acting pro se, filed a complaint against AMIKids, Inc. and AMIKids Baton Rouge, Inc., alleging that they discriminated and retaliated against her in violation of the Fair Labor Standards Act and the Equal Pay Act. Durham appeals the district court's grant of the defendants' motion for summary judgment and dismissal of her complaint.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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This court must examine the basis of its jurisdiction and may do so sua sponte, if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). After the district court's entry of judgment dismissing Durham's complaint, she filed within 28 days a motion to reopen and reconsider, which is properly construed as a Federal Rule of Civil Procedure 59(e) motion. *See Mangieri v. Clifton*, 29 F.3d 1012, 1015 n.5 (5th Cir. 1994). Where a litigant files a timely Rule 59(e) motion and a notice of appeal, the notice of appeal does not become effective until the entry of the order disposing of the motion. FED. R. APP. P. 4(a)(4)(A)(iv), (B)(i); *Burt v. Ware*, 14 F.3d 256, 260-61 (5th Cir. 1994).

Because the district court has not decided the Rule 59(e) motion, this appeal is premature. *See* FED. R. APP. P. 4(a)(4)(B)(i); *Ross v. Marshall*, 426 F.3d 745, 751-52 (5th Cir. 2005); *Burt*, 14 F.3d at 260-61. The case is, therefore, remanded to the district court for the limited purpose of allowing the district court to rule on Durham's pending postjudgment motion.

REMANDED FOR LIMITED PURPOSE; APPEAL HELD IN ABEYANCE.