

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 27, 2022

Lyle W. Cayce
Clerk

No. 21-51223

BRYAN FARISH,

Plaintiff—Appellant,

versus

MATTHEW LYNX, *Contract Psychiatrist, Kerr County Jail*; Ms. J. CAVIN, *Mental Health Supervisor, Kerr County Jail*; ANDREW BLIZZARD, *Assistant Jail Administrator, Kerr County Jail*; SYLVIA FORAKER, *Jail Administrator, Kerr County Jail*; CRIS LALONDE, *Chief Deputy, Kerr County Sheriff Department,*

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CV-680

Before HAYNES, ENGELHARDT, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Bryan Farish, Texas prisoner # 2352989, moves for leave to proceed in forma pauperis (IFP) on appeal from the dismissal of his 42 U.S.C. § 1983

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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complaint with prejudice for failure to state a nonfrivolous claim. This court must examine the basis of its jurisdiction, sua sponte, if necessary. *Trent v. Wade*, 776 F.3d 368, 387 (5th Cir. 2015). A timely NOA in a civil case is a jurisdictional prerequisite when, as here, the time limit is set by statute. *See Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007); 28 U.S.C. § 2107(a). Given that the final judgment was entered on November 8, 2021, the notice of appeal was due on December 8, 2021.

The available record shows that Farish dated his notice of appeal on November 28, but also included a letter dated December 5 stating that no stamps were available. The notice was mailed no earlier than December 14, 2021, outside of the 30-day window for filing a timely notice of appeal. *See* FED. R. APP. P. 4(a)(1)(A). However, we construe the statements in the December 5 letter as a motion under Federal Rule of Appellate Procedure 4(a)(5)(A) to extend the time to file a notice of appeal.

Accordingly, this case is REMANDED to the district court for the limited purpose of ruling on this motion and determining whether there is excusable neglect or good cause to warrant an extension. Upon making this finding, the district court shall return the case to this court for dismissal or further proceedings, as may be appropriate.