

United States Court of Appeals
for the Fifth Circuit

No. 22-40594
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
February 27, 2023

Lyle W. Cayce
Clerk

RICHARD SCOTT SHAFER,

Plaintiff—Appellant,

versus

LIEUTENANT JAVIER MURO; SERGEANT NESTOR S. OCHOA,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:20-CV-167

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

PER CURIAM:*

Richard Scott Shafer, Texas prisoner # 01680002, appeals the dismissal of his 42 U.S.C. § 1983 complaint. The appellees argue that this court lacks jurisdiction because Shafer failed to timely file a notice of appeal. Responsive to this argument, Shafer asserts that his multiple postjudgment motions filed pursuant to Federal Rule of Civil Procedure 59(e) tolled the

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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time for filing a notice of appeal and that his notice was timely filed following the denial of those motions. He also moves for the appointment of counsel.

A timely “notice of appeal in a civil case is a jurisdictional requirement.” *Bowles v. Russell*, 551 U.S. 205, 214 (2007); FED. R. APP. P. 4(a)(1)(A). Under Federal Rule of Appellate Procedure 4, the filing of certain postjudgment motions, including a timely Federal Rule of Civil Procedure 59(e) motion, renders a notice of appeal ineffective until an order is entered disposing of the motion. FED. R. APP. P. 4(a)(4)(B)(i); *see* FED. R. APP. P. 4(a)(4)(A)(iv); *see also Simmons v. Reliance Standard Life Ins. Co. of Tex.*, 310 F.3d 865, 868 (5th Cir. 2002). Although Shafer filed a timely Rule 59(e) motion following entry of final judgment, he did not appeal after the court denied that motion but instead filed objections to the denial. Those objections, even if construed as a second Rule 59(e) motion, did not suspend the 30-day period for appeal. *See Charles L.M. v. Northeast Independent School Dist.*, 884 F.2d 869, 870-71 (5th Cir. 1989); *Ellis v. Richardson*, 471 F.2d 720, 721 (5th Cir. 1973). Shafer’s notice of appeal was filed on August 24, 2022, more than 30 days after the final judgment and the May 9, 2022 denial of the initial Rule 59(e) motion. Thus, this court lacks jurisdiction over any such appeal. *See Bowles*, 551 U.S. at 214; FED. R. APP. P. 4(a)(1)(A). Likewise, the notice of appeal is untimely as to the denial of Shafer’s second postjudgment motion. *See* FED. R. APP. P. 4(a)(1)(A).

Accordingly, the appeal is DISMISSED for lack of jurisdiction. The motion for appointment of counsel is DENIED.