

United States Court of Appeals
for the Fifth Circuit

No. 26-30014

United States Court of Appeals
Fifth Circuit

FILED

October 14, 2026

Thomas B. Plunkett, III
Clerk

GILBERT LAU,

Plaintiff—Appellant,

versus

THRIFTY DISCOUNT LIQUOR AND WINES, ROLAND P. TOUPS II,
ELIZABETH PATTERSON,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:23-CV-1685

Before JONES, HO, and WILSON, *Circuit Judges*.

PER CURIAM:*

Notices of appeal in civil cases “must be filed with the district [court] within 30 days after the entry of the judgment or order appealed from.” Fed. R. App. P. 4(a)(1)(A). Litigants may toll this deadline by timely filing certain motions in the district court. Fed. R. App. P. 4(a)(4)(A). But if an appeal doesn’t satisfy either rule, it is untimely and renders the appellate court

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

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without jurisdiction. *Lucas v. Lumpkin*, 125 F.4th 639, 640 (5th Cir. 2025). Thus, as a threshold matter, we must determine whether this appeal is timely. It is not.

Pro se plaintiff Gilbert Lau brought an action against his former employer, Thrifty Liquor No. 10, L.L.C., raising claims under the Americans with Disabilities Act (“ADA”), the Louisiana Employment Discrimination Law (“LEDL”), respondeat superior, and prima facie tort.¹ He also raised the same claims against Thrifty’s co-owner, Roland P. Toups II, and its manager, Elizabeth Patterson. The magistrate judge dismissed Lau’s “prima facie tort” and “respondeat superior” claims as to all defendants and dismissed the ADA and LEDL claims as to Toups and Patterson. Lau then added an oral breach of contract claim against Thrifty and Toups.

After discovery on the remaining ADA, LEDL, and contract claims, the district court granted summary judgment for defendants on December 5, 2025. Lau filed his first notice of appeal on January 8, 2026. Because this first notice of appeal falls 34 days after the district court’s final judgment, Lau fails Rule 4(a)(1)(A)’s 30-day appeal deadline. As a result, he must file a proper motion, such as a Rule 59(e) motion, to toll the deadline. He did not.

Lau’s first motion for reconsideration, filed December 5, 2025, sought reconsideration of the Court’s October 24, 2025 order denying an extension of discovery. Lau sought reconsideration under Rule 59(e) or Rule 54(b), but the district court declined to consider the motion under Rule 59(e) because “Rule 59(e) only applies to final judgments” and Lau’s discovery-related order was not a final judgment.

¹ Thrifty is incorrectly named as Thrifty Discount Liquor and Wines in this matter.

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Like the district court, we do not construe Lau’s motion for reconsideration as properly filed under Rule 59(e). In this circuit, the “nature of a motion is determined by its substance, not its caption.” *Thomas v. Hughes*, 27 F.4th 363, 368 (5th Cir. 2022) (quoting *In re Brookshire Grocery Co.*, 250 S.W.3d 66, 72 (Tex. 2008)). And looking to the substance of the motion, Rule 59(e) is not appropriate—nor is any other motion that could toll. Thus, Lau’s first motion for reconsideration does not toll the 30-day requirement.²

Likewise, Lau’s amended motion for reconsideration, filed December 23, 2025, fails to toll. That’s because the amended motion, despite invoking Rule 59(e), still fails to challenge a final judgment. And it similarly fails to match the substance of other tolling motions.³

Finally, Lau’s second motion for reconsideration, filed January 6, 2026, also fails to toll the appeal deadline. While this motion challenged the District Court’s final judgment and has the substance of a proper Rule 59(e) motion, it was untimely filed. That’s because “[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.” Fed. R. Civ. P. 59(e). Notably, this limit is strictly enforced and “a court must not extend the time to act under” Rule 59(e). Fed. R. Civ. P. 6(b)(2). Because Lau filed his second motion for reconsideration 32 days after summary judgment, this motion was untimely and cannot toll.

² In declining to treat Lau’s motion as a Rule 59(e) motion for tolling purposes, we join our sister circuit in *United States ex rel. Hoggett v. Univ. of Phoenix*, 863 F.3d 1105, 1109-10 (9th Cir. 2017) (dismissing an appeal for lack of jurisdiction because a motion bearing the caption of 59(e), yet lacking its substance, did not toll the time for filing a notice of appeal).

³ Even if, in the interest of justice for a pro se plaintiff, we were to credit Lau’s motions under Rule 59(e), they would still fail to toll the appeal deadline because both untimely challenge the October 24, 2025 order.

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Lau contests the untimeliness of his second motion for reconsideration because his filing was postmarked in New York on December 30, 2025. Even though Lau's motion was postmarked within Rule 59(e)'s 28-day period, the Western District of Louisiana clearly states that "[a] document filed in paper form by a pro se filer is deemed filed as of the date it is received in the Clerk's office." *Administrative Procedures for Electronic Filing*, U.S. Dist. Ct. W.D. La., 4 (21st ed., Apr. 29, 2024). Because the motion was received on January 6, 2026, it was untimely.

We lack jurisdiction to hear an untimely filed appeal. Because Lau's first notice of appeal was untimely filed, and because none of his motions for reconsideration toll Rule 4(a)(1)(A)'s deadline, Lau's appeal is untimely. Thus, this Court lacks jurisdiction to hear this appeal. Accordingly, we dismiss.