

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Arthur Joyal Barker v. Ruth Brouwer

582 F. App'x 540 (5th Cir. 2014) · No. 13-40983 · Decided October 10, 2014

SUMMARY

The Fifth Circuit dismissed Arthur Joyal Barker’s appeal for lack of appellate jurisdiction because he failed to file a timely notice of appeal or motion to extend the filing deadline following denial of his Federal Rule of Civil Procedure 60(b) motion. The court also denied Barker’s motion for appointment of counsel.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Per Curiam; Higginbotham; Jones; Higginson
JURISDICTION	Federal
DECIDED	October 10, 2014
DOCKET	13-40983
DISPOSITION	dismissed
PROCEDURAL POSTURE	Barker appealed the denial of his Federal Rule of Civil Procedure 60(b) motion in his 42 U.S.C. § 1983 proceeding.
STANDARD OF REVIEW	The court examined its appellate jurisdiction sua sponte.
PRECEDENTIAL VALUE	Unpublished and nonprecedential under 5th Cir. R. 47.5, except as permitted by the rule.
PARTIES	Arthur Joyal Barker v. Ruth Brouwer, Joyce Francis, Thomas Maciel

TOPICS

- appellate jurisdiction
- appellate procedure
- section 1983
- prisoners rights
- civil rights

PRACTICE AREAS

- appellate procedure
- civil rights
- prisoner litigation
- federal jurisdiction

QUESTIONS PRESENTED

1. Whether the Fifth Circuit had appellate jurisdiction when Barker failed to file a timely notice of appeal from the denial of his Rule 60(b) motion or a timely motion to extend the filing period.
2. Whether Barker's motion for appointment of counsel should be granted.

HOLDINGS

1. The Fifth Circuit lacked appellate jurisdiction because Barker did not file a timely notice of appeal or a timely motion to extend the time for filing a notice of appeal.
2. The motion for appointment of counsel was denied.

KEY QUOTATIONS

“A timely notice of appeal is a jurisdictional requirement in a civil case.”

“Consequently, we are without jurisdiction to consider the appeal.”

FACTUAL BACKGROUND

Barker, a Texas prisoner, brought a proceeding under 42 U.S.C. § 1983 against medical and correctional personnel. After the district court denied his Rule 60(b) motion, he attempted to appeal and also sought appointment of counsel.

PROCEDURAL HISTORY

The United States District Court for the Eastern District of Texas denied Barker's Rule 60(b) motion. Barker filed an appeal, but the Fifth Circuit determined that he had not filed a timely notice of appeal from the denial or a timely motion to extend the filing period and dismissed the appeal for lack of appellate jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987)
- Bowles v. Russell, 551 U.S. 205, 213-14 (2007)
- Williams v. Chater, 87 F.3d 702, 704-06 (5th Cir. 1996)
- Bowles v. Russell, 551 U.S. 205, 214 (2007)

OPINION

PER CURIAM.

Case: 13-40983 Document: 00512800283 Page: 1 Date Filed: 10/10/2014 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT United States Court of Appeals No. 13-40983 Fifth Circuit FILED Summary Calendar October 10, 2014 Lyle W. Cayce ARTHUR

JOYAL BARKER, Clerk Plaintiff-Appellant v. RUTH BROUWER, Medical Practitioner; JOYCE FRANCIS, Vocational Nurse; THOMAS MACIEL, Registered Nurse, Defendants-Appellees Appeal from the United States District Court for the Eastern District of Texas USDC No. 9:12-CV-10 Before HIGGINBOTHAM, JONES, and HIGGINSON, Circuit Judges PER CURIAM: * Arthur Joyal Barker, Texas prisoner # 1290750, is appealing from the denial of his Federal Rule of Civil Procedure 60(b) motion filed in his 42 U.S.C. § 1983 proceeding.

We must examine the basis of our jurisdiction, sua sponte, if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). A timely * 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. Case: 13-40983 Document: 00512800283 Page: 2 Date Filed: 10/10/2014 No. 13-40983 notice of appeal is a jurisdictional requirement in a civil case.

Bowles v. Russell, 551 U.S. 205, 213-14 (2007). Barker failed to file a timely notice of appeal following the denial of his Rule 60(b) motion or a timely motion to extend the time to file a notice of appeal. Consequently, we are without jurisdiction to consider the appeal. See *Williams v. Chater*, 87 F.3d 702, 704-06 (5th Cir. 1996).

Therefore, the appeal is DISMISSED for lack of appellate jurisdiction. See *Bowles*, 551 U.S. at 214. Barker's motion for the appointment of counsel is DENIED. 2