

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-2425

RODNEY MICHAEL BAILEY,

Plaintiff - Appellant,

versus

MID ATLANTIC ISOTOPES/GEODAX,

Defendant - Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, District Judge. (CA-01-3795-JFM)

Submitted: April 22, 2003

Decided: June 4, 2003

Before WILLIAMS, KING, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Rodney Michael Bailey, Appellant Pro Se. Patrick Milton Pilachowski, Stephen David Shawe, SHAWE & ROSENTHAL, L.L.P., Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Rodney M. Bailey seeks to appeal the order of the clerk of the district court awarding costs to Mid Atlantic Isotopes/Geodax pursuant to Fed. R. Civ. P. 54(d)(1), and Local Rule 105.6 (D. Md.), following judgment for the latter party. Pursuant to Rule 54(d)(1), the clerk may tax costs to the prevailing party. "On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court." This court has held that failure to make a timely motion under the rule constitutes a waiver of the right to such review. Gary v. Spires, 634 F.2d 772, 773 (4th Cir. 1980); see also Cooper v. Eagle River Mem'l Hosp., Inc., 270 F.3d 456, 464 (7th Cir. 2001); Walker v. California, 200 F.3d 624, 626 (9th Cir. 1999). Here, Bailey's failure to seek review of the Order in district court constitutes waiver of his right to contest the award, and deprives this court of jurisdiction. 28 U.S.C. § 1291 (2000); 29 U.S.C. § 1292 (2000). Accordingly, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED