

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1029

ANNIE R. SMITH, on behalf of Alfred T. Thomas (minor),

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; PETER GILCHRIST; NATHANIEL P.
PROCTOR; YVONNE MIMS-EVANS; GRAHAM C. MULLEN; TIM D. SMITH;
THOMAS C. PORTER; HELMS, MULLISS, WICKER PLLC,

Defendants - Appellees.

No. 08-1415

ANNIE R. SMITH, on behalf of Alfred T. Thomas (minor),

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; PETER GILCHRIST; NATHANIEL P.
PROCTOR; YVONNE MIMS-EVANS; GRAHAM C. MULLEN; TIM D. SMITH;
THOMAS C. PORTER; HELMS, MULLISS, WICKER PLLC,

Defendants - Appellees.

No. 08-1625

ANNIE R. SMITH, on behalf of Alfred T. Thomas (minor),

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; PETER GILCHRIST; NATHANIEL P. PROCTOR; YVONNE MIMS-EVANS; GRAHAM C. MULLEN; TIM D. SMITH; THOMAS C. PORTER; HELMS, MULLISS, WICKER PLLC,

Defendants - Appellees.

Appeals from the United States District Court for the Western District of North Carolina, at Charlotte. Robert J. Conrad, Jr., Chief District Judge, and David C. Keesler, Magistrate Judge. (3:07-cv-00371-RJC-DCK)

Submitted: July 29, 2009

Decided: August 17, 2009

Before WILKINSON, SHEDD, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Annie R. Smith, Appellant Pro Se. Paul Bradford Taylor, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina; Grady L. Balentine, Jr., Special Deputy Attorney General, Raleigh, North Carolina; Richard Deke Falls, BARNETT & FALLS, Charlotte, North Carolina; Thomas C. Porter, THOMAS C. PORTER, ATTORNEY AT LAW, PA, Charlotte, North Carolina; Douglas William Ey, Jr., MCGUIREWOODS, LLP, Charlotte, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Annie R. Smith seeks to appeal three orders entered in her civil action filed pursuant to 42 U.S.C. § 1983 (2006): (1) the magistrate judge's order denying her leave to file a surreply (No. 08-1029); (2) the district court's order granting defendants' motions to dismiss Smith's § 1983 complaint (No. 08-1415); and (3) the district court's order granting in part and denying in part her application to proceed in forma pauperis on appeal (No. 08-1625). We dismiss the appeals for lack of jurisdiction.

In No. 08-1029, Smith seeks to appeal the magistrate judge's order denying her leave to file a surreply. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2006), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2006); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The order Smith seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. See In re Bryson, 406 F.3d 284, 287-89 (4th Cir. 2005); see also Curtiss Wright Corp. v. Gen. Elec. Co., 446 U.S. 1, 7 (1980). Accordingly, we dismiss the appeal in No. 08-1029 for lack of jurisdiction.

Turning to the appeals in Nos. 08-1415/1625, when the United States or its officer or agency is a party, the notice of appeal must be filed no more than sixty days after the entry of

the district court's final judgment or order, Fed. R. App. P. 4(a)(1)(B), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (internal quotation marks and citation omitted); accord Bowles v. Russell, 551 U.S. 205, ___, 127 S. Ct. 2360, 2366 (2007).

The district court's order in No. 08-1415 was entered on the docket on February 7, 2008. The notice of appeal was filed on April 8, 2008, one day late. With regard to No. 08-1625, the district court entered the order on the docket on March 26, 2008. Smith filed her notice of appeal on May 29, 2008, two days late.* Because Smith failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period in Nos. 08-1415/1625, we deny leave to proceed in forma pauperis in No. 08-1625 and dismiss the appeals. We dispense with oral argument because the facts and legal

* The sixtieth day fell on Sunday, May 25, 2008, and Monday, May 26, was Memorial Day. Thus, Smith had until Tuesday, May 27, 2008, to timely file her notice of appeal. See Fed. R. App. P. 26.

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED