

Rehearing granted, May 26, 2011

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-2164

OWEN FRANKLIN SILVIOUS,

Plaintiff - Appellant,

v.

AFNI, INCORPORATED,

Defendant - Appellee,

and

MIDLAND CREDIT MANAGEMENT INCORPORATED; ENCORE CAPITAL
GROUP, INCORPORATED; ACCOUNT SERVICES; APPLIED CARD BANK;
CREDIGY RECEIVABLES, INCORPORATED; CREDIT ONE BANK; LTD
FINANCIAL SERVICES, LP,

Defendant.

Appeal from the United States District Court for the Northern
District of West Virginia, at Wheeling. Frederick P. Stamp,
Jr., Senior District Judge. (5:07-cv-00145-FPS-JES)

Submitted: February 28, 2011

Decided: March 4, 2011

Before TRAXLER, Chief Judge, and KING and DIAZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Owen Franklin Silvius, Appellant Pro Se. Daniel Todd Booth,
BOOTH & MCCARTHY, Bridgeport, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Owen Franklin Silvious seeks to appeal the district court's order accepting and adopting the report and recommendation of the magistrate judge, granting AFNI, Incorporated's motion for summary judgment, and dismissing Silvious' civil action. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), 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). "[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement." Bowles v. Russell, 551 U.S. 205, 214 (2007).

The district court's order was entered on the docket on August 3, 2009. The notice of appeal was filed sixty-three days later, on October 5, 2009.* Because Silvious failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are

* For the purpose of this appeal, we assume that the date appearing on the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266, 276 (1988).

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

DISMISSED