

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 00-2136**

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JUDE L. JAMES,

Plaintiff - Appellant,

versus

INTERNATIONAL PAPER COMPANY,

Defendant - Appellee,

and

INTERNATIONAL PAPER COMPANY, INCORPORATED,

Defendant.

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Appeal from the United States District Court for the District of Maryland, at Baltimore. Andre M. Davis, District Judge. (CA-99-424-AMD)

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Submitted: March 22, 2001

Decided: March 27, 2001

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Before WILKINS, LUTTIG, and MICHAEL, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Jude L. James. Appellant Pro Se. Robert Ross Niccolini, MCGUIRE WOODS, L.L.P., Baltimore, Maryland, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Jude L. James seeks to appeal an order of the clerk of the district court awarding costs to International Paper Company, following judgment for the latter party. Pursuant to Fed. R. Civ. P. 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 Walker v. California, 200 F.3d 624, 625-26 (9th Cir. 1999) (same). Here, James filed a notice of appeal to this court twenty-six days after the clerk's order. Therefore, he has waived his right to review in the district court,\* and there is no order subject to our review. 28 U.S.C. § 1291 (1994); 28 U.S.C.A. § 1292 (West 1993 & Supp. 2000). We dismiss the appeal for lack of jurisdiction. 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

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\* Over a month after the clerk's order, James did file a motion that International Paper Company be ordered to bear its own costs. The district court approved the award of costs in the resulting order. However, James did not note an appeal from that order, and it is not before us.