



Hart v. Tannery

United States Court of Appeals, Third Circuit. June 28, 2011 | Not Reported in F.3d (Approx. 3 pages)

2011 WL 10967635

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United States Court of Appeals,
Third Circuit.

John HART

v.

Brooke TANNERY, et al.

C.A. No. 11–2008. | June 28, 2011.

(E.D.Pa.Civ. No. 10–cv–03675).

Attorneys and Law Firms

John Hart, Wynnewood, PA, pro se.

Justin R. Miller, Esq., Elliott Greenleaf & Siedikowski, Blue Bell, PA, Robert P. DiDomenicis, Esq., Holsten & Associates, Media, PA, for Brooke Tannery, et al.

Present: [AMBRO](#), [CHAGARES](#) and [COWEN](#), Circuit Judges.

ORDER

ROBERT E. COWEN, Circuit Judge.

*1 Appellant's motion for leave to appeal [in forma pauperis](#) is granted as appellant's supporting [affidavit](#) demonstrates an inability to pay the costs of the appeal. [28 U.S.C. § 1915\(a\)](#). The request to keep his [in forma pauperis](#) motion [sealed](#), however, is denied as appellant has not overcome the presumption in favor of "open process, accessible to the public" that "disallows the routine and perfunctory closing of judicial records." [In re Cendant Corp.](#), [260 F.3d 183, 193–94 \(3d Cir.2001\)](#) (citations omitted). We note for appellant's information that, because [in forma pauperis](#) motions and supporting [affidavits](#) contain sensitive information, the Clerk's Office files them as "locked" documents. That means that the document can be seen electronically (on PACER) by parties to the litigation and court staff, but not by the public. If a member of the public wants to see the document, that person has to come into the courthouse. We also grant appellees' motion to dismiss the appeal for lack of appellate jurisdiction.

Appellant seeks to appeal the Order of the District Court entered on March 14, 2011. Where the United States is not a party, a notice of appeal in a civil case must be filed "within 30 days after the judgment or *order* appealed from is entered." [Fed. R.App. P. 4\(a\)\(1\)\(A\)](#) (italics added). The appeal period is mandatory and jurisdictional. See [Bowles v. Russell](#), [551 U.S. 205, 214 \(2007\)](#); [Browder v. Dir., Dep't of Corr.](#), [434 U.S. 257, 264 \(1978\)](#). Appellant did not file his notice of appeal until April 14, 2011, one day beyond the permissible 30–day appeal period. The fact that the Clerk entered the District Court's Memorandum Opinion on the docket the following day is of no moment. See, e.g., [Ctr. for Nuclear Responsibility, Inc. v. U.S. Nuclear Reg. Comm'n](#), [781 F.2d 935, 938–39 \(D.C.Cir.1986\)](#) (a final order that precedes the opinion explaining it nonetheless starts the time for appeal).

Appellant's reliance on this Court's opinion in [United States v. Richmond](#), [120 F.3d 434, 435–436 \(3d Cir.1997\)](#), does not offer the support he attributes to it as [Fed. R.App. P. 4\(b\)](#), which is at issue in that appeal and governs appeals in criminal cases, has no application to the instant appeal. Additionally, this Court held quite some time ago that a notice of appeal cannot be construed as a motion to extend the time to appeal in a civil case. [Herman v. Guardian Life Ins. Co.](#), [762 F.2d 288 \(3d Cir.1985\)](#) (per curiam). We reiterated that holding in [Poole v. Family Court of New Castle Cnty.](#), [368 F.3d 263, 268, 269 \(3d Cir.2004\)](#), wherein we once again stated that "relief under both Appellate Rules [4\(a\)\(5\)](#) and [4\(a\)\(6\)](#) requires the filing of a motion, not just a notice of appeal." No such motion has been filed in this case. Moreover, there would be no point in transmitting appellant's response in opposition to appellees' motion received in this Court on June 6, 2011, to the District Court to be treated as an extension request as it would be untimely as a [Rule 4\(a\)\(5\)](#) motion in any event having been filed more than three weeks beyond the permissible deadline for filing such a motion.

SELECTED TOPICS

Appeal and Error

Transfer of Cause
[Forma Pauperis Appeal](#)

Secondary Sources

[Standards for determining whether proceedings in forma pauperis are frivolous and thus subject to dismissal under 28 U.S.C.A. § 1915\(d\)](#)

52 A.L.R. Fed. 679 (Originally published in 1981)

...This annotation collects and analyzes the federal cases, civil and [criminal](#), in which the courts have discussed the standards which they apply or do not apply in determining whether an action that has ...

[Right to sue or appeal in forma pauperis as dependent on showing of financial disability of attorney or other nonparty or nonapplicant](#)

11 A.L.R.2d 607 (Originally published in 1950)

...It is the object of this annotation to consider whether a party's right to sue or appeal in [forma pauperis](#) depends upon whether a person other than himself such as his attorney employed on a contingent...

[§ 3573.4Section 1983 Actions—Procedural Aspects](#)

13D Fed. Prac. & Proc. Juris. § 3573.4 (3d ed.)

...The Supreme Court has held consistently since 1963 that a plaintiff need not exhaust state remedies, whether judicial or administrative, before bringing an action under § 1983. The basis for this no-ex...

[See More Secondary Sources](#)

Briefs

[Appellant's Initial Brief on Appeal](#)

2010 WL 616588
Gerald Lee PATTERSON, Appellant, v. Randall D. EGGERT, et al, Appellee.
United States Court of Appeals, Eighth Circuit.
February 08, 2010

...Pursuant to 28 U.S.C.A. Federal Rules of Appellate Procedure, [34\(a\)\(2\)\(C\)](#). Appellant/Patterson do not request oral arguments at this time. Appellant further state that it is the Brief of the Appellant ...

[Reply Brief of Plaintiff-Appellant](#)

1994 WL 16012213
Steve OLIVARES, Plaintiff, v. Charles D. MARSHALL, Warden, et al., Defendants.
United States Court of Appeals,Ninth Circuit
September 20, 1994

...This case concerns the proper construction and application of 28 U.S.C. Section 1915(a), which provides that [a]ny court of the United States may authorize the commencement, prosecution or defense of a...

[Brief of Plaintiff-Appellant](#)

1994 WL 16059166
James F. STEHOUWER, Plaintiff-Appellant, v. Michael HENNESSEY, Sheriff, et al. Defendants, Appellees.
United States Court of Appeals,Ninth Circuit.
July 22, 1994

...Jurisdiction in this court is based on 28 U.S.C. § 1291 because this appeal is from the final judgment of the district court, entered on February 21, 1994, dismissing plaintiff's action. Tripathi v. Fir...

*2 Accordingly, because the notice of appeal was untimely filed, the appeal is dismissed for lack of jurisdiction.

Submitted are:

- (1) Appellant's motion for leave to appeal **in forma pauperis** and **affidavit** in support thereof, pursuant to [Rule 24, Federal Rules of Appellate Procedure](#);
- (2) Appellant's motion to **seal in forma pauperis** motion;
- (3) Appellee Tannery's motion in opposition to appellant's motion to **seal**;
- (4) Appellant's response to appellee's motion in opposition to motion to **seal**;
- (5) Appellees' joint motion to quash appellant's appeal; and
- (6) Appellant's motion in opposition to appellees' joint motion to quash appeal in the above-captioned case.

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[See More Briefs](#)

Trial Court Documents

[Rev. Martin Fry v. Middletown Tp.](#)

2003 WL 26075058
Rev. Martin Fry v. Middletown Tp.
United States District Court, E.D.
Pennsylvania.
March 12, 2003

...DATE: March 12, 2003 Now before me is Defendants' Motion for Summary Judgment. For the reasons that follow, this motion will be granted in **part** and denied in **part**. In this case, Reverend Martin Fry and...

[Ambrose v. Township of Robinson, PA](#)

2000 WL 35904886
Ambrose v. Township of Robinson, PA
United States District Court, W.D.
Pennsylvania.
October 11, 2000

...AMBROSE, District Judge. Pending is Defendant's Motion for Summary Judgment as to Plaintiff's Fourteenth Amendment due process claims and his First Amendment claims pursuant to 42 U.S.C. §1983, as well...

[In re The Brown Pub. Co.](#)

2010 WL 8033159
In re The Brown Pub. Co.
United States Bankruptcy Court, E.D. New York.
September 03, 2010

...Chapter 11 Upon consideration of the motion (Docket No. 25) (the "Motion") of The Brown Publishing Company and its debtor subsidiaries, the above-captioned debtors and debtors-in-possession (collective...

[See More Trial Court Documents](#)