

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 22, 2023

Christopher M. Wolpert
Clerk of Court

BRETT STRAUSS,
Plaintiff - Appellant,

v.

NICHOLAS STEELE, Officer, in his individual capacity; CHRISTOPHER YARBOROUGH, Officer, in his individual capacity,

Defendants - Appellees.

No. 23-1013
(D.C. No. 1:20-CV-03464-DDD-MEH)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ, BALDOCK, and ROSSMAN**, Circuit Judges.**

Appellant Brett Strauss is proceeding pro se. We therefore construe his pleadings liberally. *See Requena v. Roberts*, 893 F.3d 1195, 1205 (10th Cir. 2018). But he still must comply with the rules. *See id.* We hold that we lack jurisdiction to consider his arguments challenging the district-court judgment against him because his notice of appeal was untimely. And he has waived any objection to the court’s

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

postjudgment orders because he makes no argument challenging the basis of those orders.

The United States District Court for the District of Colorado dismissed with prejudice Mr. Strauss's civil-rights complaint under 42 U.S.C. § 1983 because Mr. Strauss failed to prosecute and to comply with court orders. *See* Fed. Rule of Civ. P. 41(b). Judgment was entered on September 30, 2022. On November 10, Mr. Strauss filed a motion for reconsideration which was denied on November 29. He filed additional documents on December 5, 6, and 16, which the district court construed as postjudgment motions. The court struck them all on January 9, 2023, on the ground that Mr. Strauss had failed to make reasonable, good-faith efforts to confer with counsel before filing the motions. *See* D. Colo. Civ. R. 7.1(a) (requiring such efforts to confer). Also on January 9, Mr. Strauss filed two more motions, which were struck by the court on January 11 for the same reason that it struck the prior postjudgment motions.

An additional pleading filed by Mr. Strauss on January 9 was construed by the district court as a notice of appeal. The notice of appeal was too late to appeal the original September judgment dismissing Mr. Strauss's civil-rights claims. *See* Fed. R. App. P. 4(a)(1)(A) (requiring notice of appeal in civil case not involving the United States to be filed within 30 days of entry of judgment or order appealed from). We lack jurisdiction to consider an untimely civil appeal. *See Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1239 (10th Cir. 2006). A postjudgment motion may extend the time for appeal, but only if filed within 28 days of the entry of judgment,

see Fed. R. App. P. 4 (a)(4); and none of Mr. Strauss’s motions satisfied the deadline. The notice of appeal would have been timely for the January 9 order denying his postjudgment motions filed on December 5, 6, and 16; but we find nothing in Mr. Strauss’s pleadings on appeal that challenge the district court’s application of Local Rule 7.1(a) as the basis for striking those motions. Therefore any challenge to the orders striking those motions has been waived.¹

We **AFFIRM** the court’s order striking Mr. Strauss’s postjudgment motions. We **GRANT** Mr. Strauss’s motion to proceed in forma pauperis.

Entered for the Court

Harris L Hartz
Circuit Judge

¹ One might argue that one or more of the December motions filed by Mr. Strauss could be construed as a motion for reconsideration of the November 29 order denying the November 10 motion for reconsideration of the original judgment, thereby tolling the time to appeal the November 29 order, so that the notice of appeal was timely as to that order. But none of the December motions tolled the time to appeal because they were stricken for violation of a local rule. *See Bunn v. Perdue*, 966 F.3d 1094, 1098 (10th Cir. 2020) (“Improperly filed post-judgment motions that have been struck do not toll the time to file a notice of appeal under Rule 4.”). Therefore, to the extent that Mr. Strauss may be challenging the denial of his original motion for reconsideration, we lack jurisdiction to consider the challenge.