

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-3712

In re: RICHARD MULLARKEY,
Debtor

RICHARD MULLARKEY,
Appellant

v.

LEONARD TAMBOER; LESLIE TAMBOER;
JOHN M. MCKENNA; DAVID GHERLONE;
STEVEN P. KARTZMAN

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 09-cv-04518, 05-cv-02010 & 05-cv-02594)
District Judge: Honorable Dickinson R. Debevoise

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
September 30, 2010

Before: RENDELL, CHAGARES AND VANASKIE, Circuit Judges

(Opinion filed October 7, 2010)

OPINION

PER CURIAM

The District Court dismissed Richard Mullarkey's notice of appeal from a Bankruptcy Court order on September 11, 2009. Mullarkey filed a motion for reconsideration on September 22, 2009, which the District Court denied on December 24, 2009. In the same order, the District Court affirmed the Bankruptcy Court's order and dismissed with prejudice Mullarkey's claims in their entirety. On February 5, 2010, Mullarkey filed a notice of appeal, specifying a District Court order of January 8, 2010. As no such order exists, the District Court construed it as a notice of appeal from the two earlier orders.

Upon our receipt of the notice of appeal in that case, we notified Mullarkey that his appeal was subject to dismissal for jurisdictional defect because it appeared to be untimely filed. In response, on April 27, 2010, Mullarkey filed a request for an extension of time to file his notice of appeal in the District Court. Initially, the District Court granted the motion. The Appellees filed a motion for reconsideration in the District Court. The District Court granted their motion, and vacated its order granting the extension of time, and denied Mullarkey's motion for an extension of time as untimely filed. Mullarkey appeals from that order.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the District Court's decision to deny an extension of time to file a notice of appeal for abuse of discretion.

See Ramseur v. Beyer, 921 F.2d 504, 506 n.2 (3d Cir. 1990). Upon review, we will summarily affirm the District Court's order because no substantial question is presented on appeal. See L.A.R. 27.4; I.O.P. 10.6.

The District Court properly reconsidered its decision and denied Mullarkey's motion for an extension of time to file a notice of appeal. A district court may extend the time to file a notice of appeal if "(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause." Fed. R. App. P. 4(a)(5). In this case, Mullarkey filed his request for an extension on April 27, 2010, more than 30 days after his notice of appeal should have been filed pursuant to Federal Rule of Appellate Procedure 4(a)(1). His untimely request was properly denied.