

UNITED STATES COURT OF APPEALS
FOR THE
FOURTH CIRCUIT

Docket No. 07-2146

WESLEY C. SMITH

Plaintiff/Appellant,

v.

CHERI SMITH, et al.,

Defendants/Appellees.

From the United States District Court
For the Western District of Virginia
Roanoke Division

APPELLEE RONALD FAHY'S MOTION TO DISMISS

Ronald Fahy, an appellee herein, by counsel, moves to dismiss this appeal. Mr. Fahy makes his motion pursuant to 28 U.S.C. § 2107(a) and Rule 4(a)(1) of Federal Rules of Appellate Procedure, and for the reasons that follow.

Statement of the Case

1. Plaintiff/Appellant, Wesley C. Smith, filed his Complaint in the district court on March 13, 2007, alleging violations of federal and state law.

2. All defendants filed motions to dismiss. By order entered October 12, 2007, the district court granted those motions and dismissed Mr. Smith's federal claims with prejudice and his state law claims without prejudice. A copy of the district court's order and memorandum opinion are attached hereto as Exhibit A.

3. Mr. Smith had until November 12, 2007, to file a notice of appeal with the district court. Fed. R. App. P. 4(a)(1).

4. Mr. Smith mailed his notice of appeal to the district court on November 10, 2007. The notice, however, was not received by the court and filed until November 14, 2007.

Argument

5. Section 2107(a) of the United States Code and Rule 4(a)(1) of the Federal Rules of Appellate Procedure provide that a notice of appeal must be

