

UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

Docket No. 07-2146

WESLEY C. SMITH

Appellant-Plaintiff,

v.

CHERI SMITH, et al.,

Appellee-Defendant.

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U.S. COURT OF APPEALS
FOURTH CIRCUIT

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

APPELLEE-DEFENDANTS CHERI SMITH'S AND IGOR BAKHIR'S
RESPONSE TO APPELLEE-DEFENDANT RONALD FAHY'S
MOTION TO DISMISS

COME NOW, Appellee-Defendants Cheri Smith and Igor Bakhir, by
counsel, and for their Response to Appellee Ronald Fahy's Motion to Dismiss (the
"Motion"), state as follows:

1. Ms. Smith and Mr. Bakhir concur with and adopt the reasoning set forth in the Motion.
2. Furthermore, under Federal Rule of Appellate Procedure 4(a)(5), the Appellant-Plaintiff Wesley C. Smith was required to file a motion for extension of


time by December 12, 2007, if one was to be filed. Having failed to do so, this court lacks jurisdiction to waive his untimely Notice of Appeal and dismissal is required where the Rule has not been followed. *Shah v. Hutto*, 722 F.2d 1167, 1168 (4th Cir. 1983) ("The fact that Plaintiffs are incarcerated and are proceeding *pro se* does not change the clear language of the Rule [4(a)]. Dismissal is required where the Rule has not been followed." (citations omitted)).

WHEREFORE, for the reasons set forth above, Appellee-Defendants Cheri Smith and Igor Bakhir request that this Court DISMISS the appeal.

Respectfully submitted,

CHERI SMITH and
IGOR BAKHIR

By Counsel



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CERTIFICATE OF SERVICE


I hereby certify that on December 20, 2007, I mailed the original and three copies of the foregoing to Patricia S. Connor, Clerk, United States Court of Appeals for the Fourth Circuit, U.S. Court Annex, Suite 501, 1100 E. Main Street, Richmond, VA 23219-3517 and a copy to:

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