

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 03-1515/1620

Shirley Forney,

Appellant,

v.

Calvin E. Forney; Beverly B. Forney;
Ronald R. McKenzie, Official Capacity
and individual capacity; State of
Missouri; Dennis W. Smith, Personal
Representative Ad Litem (official
capacity); Dennis W. Smith, Personal
Representative of Estate of Pearl N.
Forney,

Appellees.

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* Appeals from the United States
* District Court for the Eastern
* District of Missouri.

[UNPUBLISHED]

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Submitted: July 16, 2003

Filed: August 12, 2003

Before MORRIS SHEPPARD ARNOLD, HANSEN, and RILEY, Circuit Judges.

PER CURIAM.

Shirley Forney appeals the district court's¹ dismissal of her claims, and the court's denial of her "motion of objection to vacate (reopen), reinstate case, under" section 1291, or alternatively to "void the court's orders." For reversal she argues that the court's September 20, 2000 dismissal of her claims was not a final judgment. Appellees Calvin and Beverly Forney and Dennis W. Smith have moved to dismiss Ms. Forney's appeals as untimely. Mr. Smith has also moved for monetary sanctions. After careful review of the record, we grant the motion to dismiss in part, summarily affirm in part, and award sanctions.

We conclude that Ms. Forney's February 25 and 27, 2003 notices of appeal are untimely as to the September 2000 dismissal, which was a final and appealable judgment. See 28 U.S.C. § 1291; Fed. R. App. P. 4(a)(1)(A); Fed. R. Civ. P. 58; Lupo v. Rowland & Co., 857 F.2d 482, 484 (8th Cir. 1988). Therefore, we grant the motion to dismiss Ms. Forney's appeal of that order.

Ms. Forney's notices of appeal are timely as to the district court's January 31, 2003 denial of her motion to reopen or reinstate, or alternatively to void the district court's orders, because her notices of appeal were filed within thirty days of the entry of the January 31 order. See Fed. R. App. P. 4(a)(1)(A). Nevertheless, we summarily affirm the district court's dismissal of Ms. Forney's motion, because it was frivolous. See 8th Cir. R. 47A(a).

Finally, we grant Mr. Smith's motion for sanctions, see Fed. R. App. P. 38, and we direct Ms. Forney to pay Mr. Smith his reasonable attorney's fees and costs incurred in defending this appeal. Within fourteen days of the date of this order, Mr. Smith shall submit (and serve upon Ms. Forney) an accounting of the costs and

¹The Honorable Carol E. Jackson, Chief Judge, United States District Court for the Eastern District of Missouri.

attorney's fees he has incurred. Ms. Forney may respond to Mr. Smith's accounting within fourteen days of service.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.