

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

Shirley Williams et al.,

Plaintiffs,

v.

Case No. 03-2200-JWL

Sprint/United Management Company,

Defendant.

MEMORANDUM & ORDER

On September 11, 2007, this court entered its Order of Final Approval of Settlement. This matter is presently before the court on Opt-in plaintiff Ruby Harvey-Burgin's motion for an extension of time (doc. 4668) to file an appeal regarding an alleged error in the final settlement agreement. Because the court lacks the authority to grant an extension of time, it must deny Ms. Harvey-Burgin's motion.

Ms. Harvey-Burgin seeks an extension of time to file an appeal relating to the Order of Final Approval of Settlement, an order that was filed September 11, 2007. Her notice of appeal, then, was required to be filed on or before October 12, 2007. Fed. R. App. P. 4(a)(1)(A) (in a civil case, a party must file a notice of appeal within 30 days after the judgment or order appealed from is entered). While a party may request an extension of time to file a notice of appeal, he or she must move for such extension no later than 30 days after the time for filing a notice of appeal expires. *See* Fed. R. App. P. 4(a)(5)(A) (noting that extension of time may only

be granted where a party shows good cause or excusable neglect *and* makes a motion to extend time within 30 days of the expiration of the time to file a notice of appeal); *Brooks v. Supervalu, Inc.*, 2006 WL 2076794, at *1 (10th Cir. July 27, 2007); *Milligan v. Matthews*, 2006 WL 182057, at *2 (10th Cir. Jan. 26, 2006). Thus, Ms. Harvey-Burgin's motion for an extension of time was required to have been filed no later than November 12, 2007—30 days after the expiration of the deadline for filing a notice of appeal. Because her motion for an extension of time was not filed until January 28, 2008, it is untimely under Rule 4(a)(5)(A)(i) and the court lacks the authority to grant an extension. *See Brooks*, 2006 WL 2076794, at *1 (judge lacked the authority to grant an extension of time to file an appeal where Rule 4(a)(5) motion was untimely filed); *Avila v. Sullivan*, 1995 WL 422857, at *1 (10th Cir. July 19, 1995) (because request for an extension of time to file appeal was filed beyond the 30-day window prescribed by Rule 4(a)(5), district court appropriately denied the motion).

IT IS THEREFORE ORDERED BY THE COURT THAT Ms. Harvey-Burgin's motion for an extension of time to file an appeal (doc. 4668) is **denied**.

IT IS SO ORDERED.

Dated this 7th day of March, 2008, at Kansas City, Kansas.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge