

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 07-20073-01-01-CM
)	07-20124-01-02-CM
GUY M. NEIGHBORS,)	08-20105-01-01-CM
)	
Defendant.)	
_____)	

ORDER CERTIFYING APPEAL AS FRIVOLOUS

The court notes that defendant has filed a *pro se* notice of appeal (Doc. 225 in Case Co. 07-20073; Doc. 328 in Case No. 07-20124; and Doc. 178 in Case No. 08-20105).¹ Defendant appeals the court’s rulings in a hearing held July 28, 2010. Under normal circumstances, “the filing of a timely notice of appeal from an appealable order divests the trial court of jurisdiction and confers jurisdiction on the court of appeals.” *United States v. Mavrokordatos*, 933 F.2d 843, 846 (10th Cir. 1991). But that rule “presupposes that there is a valid appeal from an appealable order.” *Euziere v. United States*, 266 F.2d 88, 91 (10th Cir. 1959), *vacated on other grounds*, 364 U.S. 282 (1960). When an order is not appealable, an attempt to appeal that order is just that – an attempt. *Id.* “It is a nullity and does not invest the appellate court with jurisdiction, and consequently does not divest the trial court of its jurisdiction.” *Id.* (citations omitted). The district court may also ignore the notice of appeal if it is deficient for the following reasons: (1) untimeliness; (2) lack of essential recitals; (3) reference to a non-appealable order; or (4) it otherwise is clearly invalid. *Arthur Anderson & Co. v.*

¹ Although the notice of appeal appears to have been signed by Guy Neighbors, one certificate of service attached to the documents is signed by Carrie Neighbors. Mrs. Neighbors, a *pro se* litigant in her own criminal cases, is not an attorney and may not represent Mr. Neighbors. Mr. Neighbors is represented by counsel.

Finesilver, 546 F.2d 338, 340 (10th Cir. 1976).

The court disregards defendant's *pro se* notice of appeal for two reasons. First, the order that defendant appeals is not an immediately appealable final order. Second, defendant filed the notice *pro se* although he is represented by competent counsel. His notice of appeal is out of order. *See United States v. Guadalupe*, 979 F.2d 790, 795 (10th Cir. 1992).

For these reasons, the court will not stay any proceedings that may arise before this court during the pendency of the appeal.

IT IS SO ORDERED.

Dated this 12th day of August, 2010 at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge