

899 F.2d 15

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court’s decision is referenced in a “Table of Decisions Without Reported Opinions” appearing in the Federal Reporter. Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Sixth Circuit.

UNITED STATES of America, Plaintiff-Appellee

Gary Knop; John Ford; William Lovett, II;

Ramando Valeroso; Gus Jansson; Pat

Sommerville; Vernard Cohen; Jon Spytma; Robert

Shipp; Butch Davis; Ron Mixon; Kerwin Cook,

individually and on behalf of all others similarly

situated; Amici-Curiae-Appellees,

v.

STATE OF MICHIGAN; Defendant-Appellant,

James J. Blanchard, Governor of the State of

Michigan, et al., Defendants.

No. 90-1035. | April 4, 1990.

W.D.Mich.

DISMISSED.

Before KRUPANSKY and MILBURN, Circuit Judges,  
and WILLIAM K. THOMAS, Senior District Judge\*.

**Opinion**

**ORDER**

\*1 The defendants in this prisoners civil rights litigation appeal those portions of two district court orders (1) requiring them to develop and implement a new classification plan, (2) requiring them to develop a population projection plan, and (3) denying their motion to restrict discovery by the *amicus curiae*. The plaintiff

now moves to dismiss the appeal as premature. Both the defendants and *amicus* have responded.

The district court filed its orders on November 3 and 6, 1989. Pursuant to Rule 59(e), Fed.R.Civ.P., the defendants thereafter timely served and tendered to the district court a motion to reconsider or to alter the above orders. Before that order was ruled upon by the district court, the defendants filed their notice of appeal on December 4, 1989.

The motion to reconsider was denied on January 24, 1990 and defendants timely filed a new notice of appeal on February 23, 1990.

Rule 4(a)(4), Fed.R.App.P., provides that a timely Rule 59(e) motion tolls the time to file a notice of appeal until the motion is ruled upon. Any notice of appeal filed prior to such disposition has no effect. Here, the defendants’ Rule 59(e) motion to reconsider filed and served on November 20, 1989 was timely, single space notwithstanding, and tolled the time to file a notice of appeal. The December 4 notice of appeal, filed before the disposition of that motion, was ineffective. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982) (per curiam).

It is therefore ORDERED that plaintiff’s motion to dismiss the notice of appeal filed on December 4, 1989, is granted. Defendant’s notice of appeal filed on February 23, 1990 is timely.

\* The Honorable William K. Thomas, Senior U.S. District Judge for the Northern District of Ohio, sitting by designation.

**Parallel Citations**

1990 WL 38180 (C.A.6 (Mich.))