

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**APR 25 2001**

**PATRICK FISHER**  
Clerk

ABDUL AZIZ,

Plaintiff-Appellant,

v.

ALBERT A. ROSA,

Defendant-Appellee.

No. 00-1352  
(D.C. No. 98-D-2523)  
(D. Colo.)

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**ORDER AND JUDGMENT** \*

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Before **HENRY** , **BRISCOE** , and **MURPHY** , Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Plaintiff Abdul Aziz appeals from the district court's order denying his motion to remand the underlying case to state court. Because the district court dismissed this case in December of 1999 and plaintiff failed to appeal from that order, we dismiss this appeal for lack of jurisdiction.

Plaintiff filed a complaint in tort against defendant Rosa in federal district court. After initial service on defendant was quashed as insufficient under Fed. R. Civ. P. 4(e), plaintiff failed to effect service within the 120-day time period set out in Fed. R. Civ. P. 4(m). The district court issued an order allowing plaintiff an opportunity to demonstrate good cause for the failure to effect service, to which he did not respond. On December 22, 1999, the court dismissed the action without prejudice. On January 28, 2000, plaintiff filed a motion to remand the case to state court.<sup>1</sup> However, he did not appeal from the district court's dismissal of his case. The district court denied the motion to remand as moot in an order dated August 15, 2000. It is from this order that plaintiff now seeks to appeal.

On appeal, plaintiff continues to argue the merits of his underlying claims, and appears to believe that the district court granted summary judgment to defendant or dismissed the case for failure to state a claim under

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<sup>1</sup> Defendant's response to this motion notes that Aziz had confused this case with another case filed in state court in which Aziz asserted the same claims against defendant. That case, No. 99-D-2216, was removed to federal court.

Fed. R. Civ. P. 12(b)(6). Neither of those characterizations is correct. The district court dismissed plaintiff's case without prejudice because he did not respond to the court's show cause order regarding his failure to effect proper service on defendant.

Because plaintiff failed to appeal the district court's final order in this case, and because his motion to remand was not a post-judgment motion which would toll the time for taking an appeal, we conclude that we lack appellate jurisdiction over this case. *See Rodgers v. Wyo. Atty. Gen.*, 205 F.3d 1201, 1204 (10th Cir. 2000) ("This court cannot exercise jurisdiction absent a timely notice of appeal.") (quotation omitted). The appeal is DISMISSED. All pending motions are DENIED.

Entered for the Court

Michael R. Murphy  
Circuit Judge