

#114

C. A. No. 1781CV02178

Paper 113

Defendants' Motion to Strike and Dismiss Notice of Appeal

The clerk entered Judge Sarrouf's Rule 59 decision on February 23, 2022, and provided electronic notice to the attorneys on the same day. Plaintiffs had thirty days (until March 25, 2022) from "the date of the entry of the judgment, decree, appealable order, or adjudication appealed from" to file a notice of appeal. Mass. R. A. P. 4 (a). Plaintiffs filed their notice of appeal on March 28, 2022. Plaintiffs have not filed a motion to extend the time to file and do not claim excusable neglect.

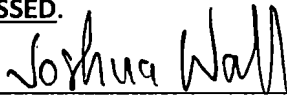
Plaintiffs do not contest that February 24, 2022 was the first day of the required period. Instead, plaintiffs rely on the mailbox rule to assert that three days should be added to the thirty-day period. See Mass. R. Civ. P. 6 (d) and (e).

The time period commenced with the entry of an order; plaintiffs were not responding to a notice or paper served upon them by mail or email. The mailbox rule, therefore, does not extend the thirty-day period for filing a notice of appeal. See *Commonwealth v. White*, 429 Mass. 258, 261-262 (1999) (time period for filing notice of appeal begins to run upon entry of judgment, not upon service). See also *New England Patriots Fans v. National Football League, Inc.*, 94 Mass. App. Ct. 1110 (2018) (Rule 1:28 decision).

A motion to extend, had it been filed, appears futile. Plaintiffs complain of delayed mail delivery, but that would not be excusable neglect because it is not a circumstance that is "unique or extraordinary." Without excusable neglect, the court has no discretion to extend the time period for filing a notice of appeal. See *Shaev v. Alvord*, 66 Mass. App. Ct. 910, 911 (2006); *Pierce v. Hansen Eng'g & Mach. Co., Inc.*, 95 Mass. App. Ct. 713 (2019).

The law gives the court no discretion to allow this late filing and defendants' motion to strike and dismiss is **ALLOWED**. It is **ORDERED** that plaintiffs' appeal is **DISMISSED**.

April 15, 2022

  
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Joshua Wall  
Justice of the Superior Court