

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

HIGHMARK, INC.	§	
	§	
VS.	§	CIVIL NO. 4:03-CV-1384-Y
	§	
ALLCARE HEALTH MANAGEMENT	§	
SYSTEMS, INC.	§	

ORDER DENYING MOTION FOR SEPARATE DOCUMENT ENTERING JUDGMENT  
OR, IN THE ALTERNATIVE, FOR AN EXTENSION TO FILE NOTICE OF APPEAL

Before the Court is Defendant's motion asking the Court to enter judgment on a separate document pursuant to Federal Rule of Civil Procedure 58(a) (doc. 709). Alternatively, Defendant requests a thirty-day extension of time to file a notice of appeal. Also before the Court is Plaintiff's motion for leave to file a sur-reply (doc. 713). After review, the Court DENIES both motions.

The Court addresses Plaintiff's motion first. Under the local rules, the movant is generally entitled to have the final word. See N.D. Tex. L. Civ. R. 7.1(e)-(f). Indeed, sur-replies are "highly disfavored" and are permitted only in "exceptional or extraordinary circumstances." *Lacher v. West*, 147 F. Supp. 2d 538, 539 (N.D. Tex. 2001) (Lindsay, J.). Plaintiff has not demonstrated that such exceptional circumstances exist. Accordingly, Plaintiff's motion for leave to file a sur-reply is DENIED.

The Court now turns to Defendant's motion. Defendant claims that it is unclear whether this Court's order awarding attorney's fees was intended to be a final judgment. As such, Defendant urges the Court to enter a separate judgment from its order disposing of

Plaintiff's motion for attorney's fees pursuant to Rule 58(a).

As Plaintiff points out, though, Rule 58(a) specifically excludes orders for attorney's fees under Federal Rule of Civil Procedure 54 from the requirement of a separate document. Fed R. Civ. P. 58(a)(3). Moreover, when this Court entered its original order awarding attorney's fees in 2010, Defendant had no trouble understanding that the order was a final appealable order when it filed its timely appeal. (Doc. 665.) The Court sees no reason why a separate document would be required for what is essentially the same order on remand.

Defendant requests, in the alternative, that the Court extend the deadline for filing a notice of appeal by thirty days. Federal Rule of Appellate Procedure 4(a) authorizes this Court to extend the time for filing a notice of appeal if (1) the party files its motion for an extension no later than thirty days after the original time limit for filing a notice of appeal and (2) the party shows excusable neglect or good cause. Fed. R. App. P. 4(a)(5)(A). Defendant filed its request for an extension within the time prescribed under Rule 4(a), but the Court concludes that it has failed to establish good cause or excusable neglect for failing to file a timely notice of appeal.

Defendant claims that good cause for an extension exists given that, according to Defendant, it has a meritorious appeal but has had difficulty securing funds to pay an attorney. Defendant asserts

that a thirty-day extension would permit it to continue its efforts to raise money to fund an appeal. As Plaintiff point out though, Defendants have had ample time to raise the funds to pursue an appeal given the amount of time that the issue of attorney's fees has been pending before this Court following remand by the Federal Circuit.

To the extent that Defendant argues that good cause exists based on its confusion over whether the Court's order awarding attorney's fees was a final appealable order, such argument is without merit. A sister circuit has held that even if a district court's decision is unclear as to finality, that does not constitute good cause for the party's failure to file a timely notice of appeal, especially where the clerk entered the unambiguous "case closed" notation on the docket. *Mirpuri v. ACT Mfg., Inc.*, 212 F.3d 624 (1st Cir. 2000).

Such a notation was made on the docket in this case. Furthermore, counsel for Defendant acknowledges that a representative from the clerk's office notified him, after conferring with chambers, that a separate judgment would not issue. Counsel received such notice prior to the deadline for filing a notice of appeal. Finally, and as stated above, any confusion over whether the order on remand awarding attorney's fees was a final appealable order could have been resolved by reviewing the 2010 order awarding fees, which was appealed without the entry of a

separate document.

Based on the forgoing, Defendant's motion for the entry of a separate document pursuant to Rule 58(a) is DENIED. Defendant's alternative request for a thirty-day extension of time to file a notice of appeal is also DENIED based on Defendant's failure to demonstrate good cause or excusable neglect. Plaintiff's motion to file a sur-reply is likewise DENIED.

SIGNED September 29, 2015.

  
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TERRY R. MEANS  
UNITED STATES DISTRICT JUDGE