

When in Doubt, Assume the Earliest Possible Deadline

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One of the most important factors in preserving your appellate rights is knowing when the clock starts running on your deadline to appeal. While the answer may appear simple as a matter of course, that is not always the case. In *Love v. Wal-Mart Stores, Inc.*, 865 F.3d 1322 (11th Cir. 2017), the Eleventh Circuit dismissed an appeal as untimely because it was not filed within 30 days of a stipulation of voluntary dismissal under Rule 41. This decision reminds practitioners that, when in doubt, assume the earliest possible deadline for your appeal. *Love* arose after the Supreme Court decided *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), a decision in which the Supreme Court reversed the certification of a nationwide putative class of female Wal-Mart employees. Certain putative members of that class then brought a separate action and sought certification of a regional class. While the district court dismissed the class claims as untimely, it allowed the individual claims to go forward. The named plaintiffs subsequently settled their individual claims with Wal-Mart. Thereafter,

- On October 16, 2015, the named plaintiffs and Wal-Mart filed a stipulation of voluntary dismissal with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).
- On October 23, 2015, the district court entered an order acknowledging the parties' dismissal of the case and denying all pending motions as moot.
- On November 6, 2015, unnamed members of the putative class filed a motion to for leave to intervene, on the sole basis that intervention would enable them to appeal the district court's order dismissing the class claims.
- On November 19, 2015, the district court denied the motion to intervene, holding that the stipulated dismissal stripped the district court of jurisdiction to hear the motion.
- Also on November 19, 2015, a group of would-be class members filed their notice of appeal of both: (i) the order dismissing the class claims; and (ii) the order denying the motion to intervene.

On appeal, the Eleventh Circuit held the appeal of the order dismissing the class claims was untimely because it was filed 34 days after "the judgment or order appealed from," under Rule of Appellate

Procedure 4. The “judgment or order appealed from” was the October 16, 2015, stipulation of voluntary dismissal filed by the named plaintiffs and Wal-Mart. As to the order denying the motion to intervene, the Eleventh Circuit held that the appeal was timely, but nonetheless moot because the would-be class members sought intervention only to appeal the order dismissing the class claims. The Eleventh Circuit explained that “the stipulated dismissal resolved all of the claims of all the parties to the case at that time, which did not include the would-be intervenors,” reasoning: Because FRCP 41(a)(1)(A)(ii) specifies the plaintiff can by stipulation dismiss an action ‘without a court order,’ the ‘plain language of Rule 41(a)(1)(A)(ii) requires that a stipulation filed pursuant to that subsection is self-executing and dismisses the case upon its becoming effective,’ i.e., ‘upon filing unless it explicitly conditions its effectiveness on a subsequent occurrence.’ (emphases added). The stipulated dismissal in *Love* did not “explicitly condition its effectiveness on a subsequent occurrence.” As a result, the October 16 stipulated dismissal, itself, was “the judgment or order appealed from,” under Federal Rule of Appellate Procedure 4. The Eleventh Circuit explained that the district court’s subsequent October 23 order was not necessary, and that it did not affect the finality of the October 16 stipulated dismissal. Accordingly, the November 19 appeal was untimely as to the dismissal of the class claims. **Preservation Tip:** In any appeal, you want to focus on the merits of your arguments. You do not want to be arguing over the timeliness of the appeal itself. Because the consequences for an error are fatal to your ability to appeal, you should aim to avoid timeliness issues altogether, by: (i) identifying the procedural posture of the case and researching both the applicable trial court and appellate rules; or (ii) consulting an appellate practitioner already familiar with the issues. Regardless, when in doubt, always assume the earliest possible deadline.

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