IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

WILBERT V. JOHNSON, *Plaintiff,*	CIVIL NO. 3:06cv00061
v.	MEMORANDUM OPINION and ORDER
COMMONWEALTH OF VIRGINIA *and* THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, *Defendants*	JUDGE NORMAN K. MOON

On June 21, 2007, Plaintiff's wife filed—on behalf of Plaintiff—a Petition for the Appointment of a Guardian Ad Litem; the purpose of the petition was "to preserve the rights of the Plaintiff … to file a timely Notice of Appeal" from an order dismissing Plaintiff's case.

On June 25, I entered an order stating that based on the information before the Court, I could not determine whether Plaintiff was incompetent. I ordered Plaintiff and/or Plaintiff's wife to appear for a hearing with evidence of Plaintiff's incompetence, evidence regarding his financial ability to pay a guardian, and the identity of Plaintiff's proposed guardian, if any.

Later on June 25, however, Plaintiff filed a Notice of Appeal. The general rule is that the filing of a notice of appeal divests the district court of jurisdiction. *E.g.*, *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) ("The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal."); *Brickwood Contractors, Inc. v. Datanet Eng'g, Inc.*, 369 F.3d 385, 393 (4th Cir. 2004). One exception to the general rule could possibly apply here: "a district court does not lose jurisdiction to proceed as to matters in aid of the appeal." *In re Grand Jury Proceedings Under Seal*, 947 F.2d 1188, 1190

(4th Cir. 1991). Certainly, if Plaintiff is incapacitated, appointment of a guardian would be appropriate and would aid in his appeal. Here, however, the petition specifically requested appointment of a guardian "to preserve the rights of the Plaintiff … *to file a timely Notice of Appeal*," which Plaintiff has already accomplished. Therefore, because Plaintiff has successfully filed a notice of appeal, this Court lacks jurisdiction to hear the petition.

As such, the hearing set for Monday, July 2, 2007, at 10:30 a.m. is hereby CANCELLED.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all parties and to all counsel of record.

ENTERED: /s_____
United States District Judge

_____
Date