

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 15 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KATTY YASHARAL,

Plaintiff - Appellant,

v.

COUNTY OF LOS ANGELES; et al.,

Defendants - Appellees.

No. 06-56322

D.C. No. CV-02-06896-JFW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted April 11, 2008**
Pasadena, California

Before: BEEZER, T.G. NELSON, and SILVERMAN, Circuit Judges.

Katty Yasharal appeals the district court's dismissal under Federal Rule of Civil Procedure 41(b) for failure to prosecute. She also appeals the district court's

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

denial of her Federal Rule of Civil Procedure 60(b) motion for relief from dismissal.

We lack jurisdiction to review Yasharal's appeal of the dismissal for failure to prosecute because the notice of appeal from that order was filed four months too late. *See* Fed. R. App. Proc. 4(a)(1).

We review the district court's denial of Yasharal's motion for relief from judgment under Rule 60(b) for abuse of discretion. *See Latshaw v. Trainer Wortham & Co., Inc.*, 452 F.3d 1097, 1100 (9th Cir. 2006). Federal Rule of Civil Procedure 60(b) allows a district court to relieve a party from an order by reason of "excusable neglect," which includes "negligence on the part of counsel" as well as "carelessness and inadvertent mistake." *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir. 2000). In addition, "[t]he determination of whether neglect is excusable is an equitable one that depends on at least four factors: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith." *Id.* (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)).

The district court's analysis of the four *Bateman* factors does not "[fail to] apply the correct law or [] rest[] its decision on a clearly erroneous finding of material fact." *Flores v. Arizona*, — F.3d —, 2008 WL 484339, at *17 (9th Cir.

Feb. 22, 2008) (internal quotations and citations omitted). The district court did not abuse its discretion in denying Rule 60(b) relief.

AFFIRMED.