

APR 28 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KANE PATTERSON,

Plaintiff - Appellant,

v.

PAUL DRAKULICH; et al.,

Defendants - Appellees.

No. 08-15456

D.C. No. 2:07-CV-01297-LRH-  
RJJ

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted April 13, 2009\*\*

Before: GRABER, GOULD, and BEA, Circuit Judges.

Nevada prisoner Kane Patterson appeals pro se from the district court's judgment dismissing without prejudice his 42 U.S.C. § 1983 action for failure to

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\* 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. *See* Fed. R. App. P. 34(a)(2).

comply with a court order to pay an initial partial filing fee. We dismiss for lack of jurisdiction.

Patterson challenges the district court's February 8, 2008 judgment dismissing his action for failure to pay an initial partial filing fee. However, on March 12, 2008, the district court granted Patterson's Motion for Review and reinstated the action to give Patterson additional time to pay the initial filing fee. The district court's grant negated the finality of its February 8, 2008 judgment, which deprives this court of jurisdiction. *See United Nat'l Ins. Co. v. R & D Latex Corp.*, 242 F.3d 1102, 1109-10 (9th Cir. 2001) (holding that notice of appeal filed while motion for reconsideration was pending was not effective after district court negated finality of judgment by granting leave to amend complaint). Further, we lack jurisdiction to consider the district court's May 9, 2008 judgment dismissing Patterson's action for again failing to pay the initial partial filing fee because Patterson did not file a notice of appeal with respect to that subsequent decision. *See Fed. R. App. P. 3.*

**DISMISSED.**