

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-50612
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 25, 2019

Lyle W. Cayce
Clerk

MICHAEL KLEINMAN,

Plaintiff - Appellant

v.

CITY OF AUSTIN,

Defendant - Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:15-CV-497

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Michael Kleinman successfully sued the City of Austin for violations of the Clean Water Act (“CWA”). After a bench trial, the district court found that Austin violated the CWA, issued a civil penalty against the City, and awarded Kleinman attorney’s fees and costs. Kleinman appealed, contending that the district court made “erroneous” findings of fact and conclusions of law. As a

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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result, Kleinman asserts the district court awarded the wrong relief and too little in attorney's fees. Because Kleinman did not timely appeal the district court's judgment, we DISMISS his appeal of the judgment and AFFIRM the district court's attorney's-fees award.

First, Kleinman did not timely appeal the judgment on the merits and thus cannot contest the relief the district court granted in its final judgment. FRAP 4(a)(1)(1)(A) requires litigants to file a notice of appeal "within 30 days after entry of the judgment or order appealed from." The district court entered judgment on March 6, 2018. Kleinman moved for attorney's fees on March 20, which the court awarded on June 26. Kleinman appealed both the judgment and the fees award on July 23—over four months late for the judgment on the merits. And contrary to Kleinman's arguments, "[m]otions addressing costs and attorney's fees . . . are considered collateral to the judgment, and *do not toll the time period for filing an appeal.*" *Moody Nat'l Bank of Galveston v. GE Life & Annuity Assur. Co.*, 383 F.3d 249, 250 (5th Cir. 2004) (emphasis added) (citing FED. R. CIV. P 54(d)). *See also Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 200 (1988).

Second, Kleinman cannot demonstrate that the trial court abused its discretion when it awarded attorney's fees. He argues that the district court erred by basing its award on "erroneous" factual findings and conclusions of law. At bottom, his attorney's-fees argument rises and falls with his merits argument. And because Kleinman has failed to present the merits to this court, he has also failed to present a meritorious argument that the district court abused its discretion.

We DISMISS his appeal of the judgment and AFFIRM the attorney's-fees award.