

No. 11-508

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

In re: SWIFT TRANSPORTATION COMPANY, )  
INC., ) ORDER  
)  
Petitioner. )



Before: NORRIS, SILER, and MOORE, Circuit Judges.

In four consolidated actions, the district court certified a plaintiff class of persons who had obtained commercial drivers licenses through a school operated by Swift Transportation Company (“Swift”), the defendant in these actions. Swift petitions this court under Federal Rule of Civil Procedure 23(f) for permission to appeal that decision. The plaintiffs oppose an interlocutory appeal.

The plaintiffs asserted claims for breach of contract, unjust enrichment, and negligence. On July 1, 2011, the district court issued a decision that certified a plaintiff class. Within 14 days, Swift moved for reconsideration of that order. On September 2, the district court denied that motion. Swift filed a petition for permission to appeal in this court on September 19. The plaintiffs oppose the petition as untimely and also on the merits. Although it does not concede that its petition was untimely, Swift returned to the district court and moved for an extension of time to file the petition. The district court granted that motion by an order issued on October 13, 2011.

We conclude that this petition is untimely. Rule 23(f) provides that we “may permit an appeal from an order granting or denying class-action certification . . . if a petition for permission to appeal is filed with the circuit clerk within 14 days after the order is entered.” Even accepting Swift’s assertion that its timely motion for reconsideration tolled the period for filing the petition, the district court entered the order denying reconsideration on September 2, and the petition to appeal

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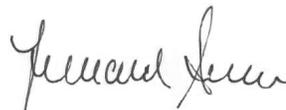
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thus was due on or before September 16. The district court's order granting Swift's motion for an extension of time did not cure the untimeliness the district court did not have authority to extend the period of time for a petition under Rule 23(f). *Gutierrez v. Johnson & Johnson*, 523 F.3d 187, 193 n.5 (3d Cir. 2008) ("A district court may not . . . enlarge the time to file a Rule 23(f) petition."). Moreover, Federal Rule of Civil Procedure 6(d) only confers an extra three days when a party is required to act within a period that begins "with service" of a document. But Rule 23(f) states a time period that begins with "the entry" of a decision. In a similar context, Rule 6(d) does not confer an additional three days for filing a notice of appeal. *Ultimate Appliance CC v. Kirby Co.*, 601 F. 3d 414, 416 (6th Cir. 2010); *see also Delta Airlines v. Butler*, 383 F.3d 1143, 1145 (10th Cir. 2004) (holding that district court lacks authority to extend the time for filing a Rule 23(f) petition and that Rule 6(b) does not apply).

Aside from the untimeliness of the petition, we are not otherwise persuaded that this is a case for interlocutory appeal. There is no hard-and-fast test in support of immediate appeal, but rather a "broad discretion to grant or deny a Rule 23(f) petition," in which "any pertinent factor may be weighed . . . ." *In re Delta Air Lines*, 310 F.3d 953, 959 (6th Cir. 2002). Interlocutory appeals are not to be routinely accepted. *Id.* Although Swift argues that its appeal presents an unsettled question of law of whether class certification is appropriate where affirmative defenses depend on facts specific to individual plaintiffs, this case is closer to "ordinary cases, which involve the application of well-established standards to the facts of a particular case." *Id.* at 959-60.

Upon consideration, the petition for permission to appeal is **DENIED**.

ENTERED BY ORDER OF THE COURT



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Clerk