

No. 17-6491

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PAUL DAVID MAZE,
Plaintiff-Appellant,
v.
RENEA TERRELL; Nurse Practitioner, et al.,
Defendants-Appellees.

FILED
May 23, 2018
DEBORAH S. HUNT, Clerk

ORDER

Before: KEITH, WHITE, and BUSH, Circuit Judges.

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Alston v. Advanced Brands & Importing Co.*, 494 F.3d 562, 564 (6th Cir. 2007). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A).

In this civil action, the district court entered its final judgment on April 16, 2015. For the next two years, Paul David Maze filed a number of post-judgment motions seeking to set aside the April 16, 2015 judgment. The latest post-judgment motion was denied on October 25, 2017. Because Maze did not file his notice of appeal from the October 25, 2017 decision until December 5, 2017, the notice of appeal is untimely.

Maze's failure to timely file a notice of appeal deprives this court of jurisdiction. Compliance with § 2107 is a mandatory prerequisite that this court may neither waive nor extend. *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Section 2107(c) provides for the possibility of an extension of the time to file a notice of appeal in two circumstances, but a party seeking such an extension

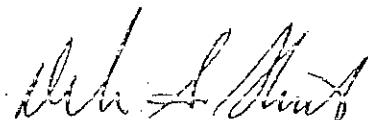
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must file a motion asking for more time. *See* § 2107(c); *Martin v. Sullivan*, 876 F.3d 235, 237 (6th Cir. 2017). Maze has not filed such a motion, and the court will not treat this notice of appeal as a motion for more time to file an appeal. *See Martin*, 876 F.3d at 237.

It is ordered that this appeal is **DISMISSED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt
Deborah S. Hunt, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

ORDER DENYING LATEST POST-JUDGMENT MOTION,
DIRECTING CLERK NOT TO ACCEPT FURTHER FILINGS
AND NOTIFYING PLAINTIFF OF APPELLATE FILING FEE

On October 23, 2017, the *pro se* prisoner Plaintiff, Paul David Maze, filed another in a series of motions attempting to convince the Court to set aside the order of dismissal and judgment that were entered in this case more than two years ago. (ECF No. 59.) However, notwithstanding Plaintiff's insistence that the case was erroneously dismissed, the Court is not convinced. For the reasons stated in the order of dismissal and in the orders denying his previous post-judgment motions, this latest request for relief is also DENIED.

The Court will not set aside the judgment in this case absent an order from the Sixth Circuit Court of Appeals. Accordingly, the Clerk is DIRECTED to accept no further filings from Plaintiff in this matter except a notice of appeal and a properly supported application to appeal *in forma pauperis*, should he choose to do so.

If Plaintiff files a notice of appeal, he must pay the entire \$505 appellate filing, although he may be able to pay the fee in installments pursuant to 28 U.S.C. § 1915(b). If he wishes to take advantage of the installment procedures, Plaintiff should also file, along with the notice of appeal, an updated *in forma pauperis* affidavit and a current certified inmate trust account statement for the six months immediately preceding the notice of appeal. § 1915(a)(2).

IT IS SO ORDERED.

s/ James D. Todd
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

PAUL D. MAZE, Plaintiff, VS. RANAE TERRELL, ET AL., Defendants.
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, EASTERN
DIVISION
2015 U.S. Dist. LEXIS 128894
No. 14-1153-JDT-egb
September 25, 2015, Filed

Editorial Information: Prior History

Maze v. Terrell, 2015 U.S. Dist. LEXIS 48590 (W.D. Tenn., Apr. 14, 2015)

Counsel Paul David Maze, Plaintiff, Pro se, Greenville, IL.
Judges: JAMES D. TODD, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: JAMES D. TODD

Opinion

ORDER DENYING MOTION FOR RECONSIDERATION

On July 1, 2014, Plaintiff Paul David Maze, who currently incarcerated at the Federal Correctional Institution in Greenville, Illinois, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1.) The Court issued an order on April 14, 2015, dismissing the complaint *sua sponte* pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) for failure to state a claim on which relief may be granted and assessing a third strike under § 1915(g); judgment was entered on April 16, 2015. (ECF Nos. 28 & 29.)

Plaintiff filed a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e) on May 8, 2015. (ECF No. 33.) The Court denied the motion on May 11, 2015. (ECF No. 34.) On June 22, 2015, Plaintiff filed an amended motion for reconsideration pursuant to Rules 59(e) and 60(b), for leave to amend the complaint and for discovery (ECF No. 35), which was also denied (ECF No. 36). A third motion to reconsider and to amend was filed on August 3, 2015 (ECF No. 37), which was likewise denied on August 4, 2015 (ECF No. 39). On September 23, 2015, Plaintiff filed yet a fourth motion for reconsideration pursuant to Rules 59(e) and 60(b). (ECF No. 42.)

Rule 59(e) is not intended to allow a party "to relitigate matters already decided by the Court." *Windsor v. Federal Executive Agency*, 614 F. Supp. 1255, 1264 (M.D. Tenn. 1984), *aff'd*, 767 F.2d 923 (6th Cir. 1985). Rather, the purpose of the rule "is to allow a district court to correct its own mistakes." *White v. New Hampshire Dep't of Emp't Sec.*, 455 U.S. 445, 450, 102 S. Ct. 1162, 71 L. Ed. 2d 325 (1982). A motion to alter or amend the judgment may be granted if there is a clear error of law, newly discovered evidence, an intervening change in the controlling law, or to prevent manifest injustice. *Graves v. Bowles*, 419 F. App'x 640, 646 (6th Cir. 2011); *ACLU of Ky. v. McCreary Cnty.*, Ky., 607 F.3d 439, 450 (6th Cir. 2010); *Henderson v. Walled Lake Consol. Sch.*, 469 F.3d 479, 496 (6th Cir. 2006); *Gencorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999).

Rule 60(b) provides:

On motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial . . . ; (3) fraud . . . , misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; . . . ; or (6) any other reason that justifies relief. Plaintiff appears to be relying on subsections (1) and (6) of Rule 60(b). To the extent he asserts that the Court's ruling was legally deficient, a claim of legal error falls within the definition of "mistake" under Rule 60(b)(1). *Cincinnati Ins. Co. v. Byers*, 151 F.3d 574, 578 (6th Cir. 1998); *Barrier v. Beaver*, 712 F.2d 231, 234 (6th Cir. 1983). A motion under Rule 60(b)(1) is:

intended to provide relief to a party in only two instances: (1) when the party has made an excusable litigation mistake or an attorney in the litigation has acted without authority; or (2) when the judge has made a substantive mistake of law or fact in the final judgment or order. *Cacevic v. City of Hazel Park*, 226 F.3d 483, 490 (6th Cir. 2000) (quoting *Yapp v. Excel Corp.*, 186 F.3d 1222, 1231 (10th Cir. 1999)). However, Rule 60(b) is not intended to allow relief from judgment merely because Plaintiff is unhappy with the outcome. See *Jinks v. AlliedSignal, Inc.*, 250 F.3d 381, 385 (6th Cir. 2001).

Subsection (6) of Rule 60(b) authorizes relief only "in exceptional or extraordinary circumstances" that are not covered under subsections (1)-(5). See *Pierce v. United Mine Workers of Am. Welfare and Retirement Fund for 1950 and 1974*, 770 F.2d 449, 451 (6th Cir. 1985). "Exceptional circumstances" under Rule 60(b)(6) means "unusual and extreme situations where principles of equity *mandate* relief." *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990). Plaintiff's circumstances do not present the type of unusual or extreme situation justifying relief under Rule 60(b)(6).

Nothing in Plaintiff's September 23, 2015, filing justifies granting relief under either Rule 59(e) or 60(b). Therefore, the motion for reconsideration is DENIED. The Court again CERTIFIES that an appeal would not be taken in good faith.

IT IS SO ORDERED.

/s/ **James D. Todd**

JAMES D. TODD

UNITED STATES DISTRICT JUDGE

No. 17-6491

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Aug 21, 2018

DEBORAH S. HUNT, Clerk

PAUL DAVID MAZE,

Plaintiff-Appellant,

v.

RENEA TERRELL, NURSE PRACTITIONER, ET AL.,

Defendants-Appellees.

ORDER

BEFORE: KEITH, WHITE, and BUSH, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**