

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-10275



A True Copy
Certified order issued Apr 03, 2019

Lytle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

REGINALD DONELL RICE,

Plaintiff - Appellant

v.

CAREY D. COCKELL; CARRIE WRIGHT; LAUREN OSTEEN,

Defendants - Appellees

Appeal from the United States District Court for the
Northern District of Texas

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of April 3, 2019, for want of prosecution. The appellant failed to timely pay docketing fee.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

Shawn D. Henderson

By: _____
Shawn D. Henderson, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

"APPENDIX A;" 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

REGINALD DONELL RICE,

§

Plaintiff,

§

v.

Civil No. 3:10-cv-0741-O

CAREY D. COCKELL et al.,

§

Defendants.

§

**ORDER ACCEPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

After making an independent review of the pleadings, files, and records in this case, of the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, and of Plaintiff's objections thereto, I am of the opinion that the fact findings and conclusions of law set forth in the Findings, Conclusions, and Recommendation of the Magistrate Judge are correct and they are hereby adopted and incorporated by reference as the findings of the Court.

Accordingly, Plaintiff's motion for leave to file a Rule 60(b) motion and application to proceed *in forma pauperis* are **DENIED**.

SO ORDERED this 21st day of February, 2019.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

REGINALD DONELL RICE,)
Plaintiff,)
vs.) No. 3:10-CV-741-O (BH)
CAREY D. COCKELL, et al.,) Referred to U.S. Magistrate Judge
Defendants.)

FINDINGS, CONCLUSION AND RECOMMENDATION

By *Special Order No. 3-251*, this *pro se* prisoner case has been referred for findings, conclusions and recommendation. Before the Court is the plaintiff's *Motion for C.O.A. and In Forma Pauperis*, received March 5, 2019 (doc. 14). Based on the relevant filings, evidence and applicable law, the motion should be **DENIED**.

Reginald Donell Rice (Plaintiff), an inmate in the Texas Department of Criminal Justice, filed a civil rights action against three individuals for alleged violations of his constitutional rights in connection with state proceedings to terminate his parental rights and to place his infant daughter in the custody of Child Protective Services. (*See* doc. 1.) The case was dismissed on June 7, 2010, because Plaintiff was barred from proceeding *in forma pauperis* under the "three-strikes" provision of the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g), and he did not pay the filing fee. (*See* docs. 7, 8.) Plaintiff filed a motion for leave to file a motion under Fed. R. Civ. P. 60(b) and to proceed *in forma pauperis*, received on January 17, 2019 (doc. 9). The motion was denied on February 21, 2019 (doc. 12). He filed a notice of appeal, received on March 5, 2019 (doc. 13). He now seeks a certificate of appealability (COA) and to proceed *in forma pauperis* on appeal.

A COA is not required to appeal in a civil rights case. This case was dismissed because Plaintiff was barred from proceeding *in forma pauperis* and he did not pay the filing fee, and he is still barred from proceeding *in forma pauperis* by operation of the three-strikes rule.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

REGINALD DONELL RICE,)
Plaintiff,)
vs.) No. 3:10-CV-741-O-BH
CAREY D. COCKELL, et al.,)
Defendants.) Referred to U.S. Magistrate Judge

**RECOMMENDATION REGARDING REQUEST TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

By *Amended Miscellaneous Order No. 6* (adopted by *Special Order No. 2-59* on May 5, 2005), requests to proceed *in forma pauperis* are automatically referred.

Before the Court is the plaintiff's *Application to Proceed In Forma Pauperis*, received on March 15, 2019 (doc. 16).

The request for leave to proceed *in forma pauperis* on appeal should be DENIED because the Court should certify pursuant to Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3) that the appeal is not taken in good faith, and because Plaintiff may not proceed *in forma pauperis* on appeal under 28 U.S.C. § 1915(g) (three-strikes rule).

If the Court denies the request to proceed *in forma pauperis* on appeal, Plaintiff may challenge the denial by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within thirty days after service of the notice required by Fed. R. App. P. 24(a)(4). See Fed. R. App. P. 24(a)(5).

SIGNED this 22nd day of March, 2019.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

REGINALD DONELL RICE,)
Plaintiff,)
vs.) No. 3:10-CV-741-O (BH)
CAREY D. COCKELL, et al.,) Referred to U.S. Magistrate Judge
Defendants.)

FINDINGS, CONCLUSION AND RECOMMENDATION

By *Special Order No. 3-251*, this *pro se* prisoner case has been referred for findings, conclusions and recommendation. Before the Court is the plaintiff's *Motion for Leave to Proceed to File Motion for Rule 60(b) and In Forma Pauperis*, received January 17, 2019 (doc. 9). Based on the relevant filings, evidence and applicable law, the motion should be **DENIED**.

I. BACKGROUND

Reginald Donell Rice (Plaintiff), an inmate in the Texas Department of Criminal Justice, filed a civil rights action against three individuals for alleged violations of his constitutional rights in connection with state proceedings to terminate his parental rights and to place his infant daughter in the custody of Child Protective Services. (*See* doc. 1.) The case was dismissed on June 7, 2010, because Plaintiff was barred from proceeding *in forma pauperis* under the "three-strikes" provision of the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g), and he did not pay the filing fee. (*See* docs. 7, 8.)

Plaintiff now seeks leave to file a motion under Fed. R. Civ. P. 60(b) and an application to proceed *in forma pauperis*, which he attached to his motion. His proposed Rule 60(b) motion claims that counsel was appointed to represent him, counsel persuaded him to sign papers to transfer this case to the United States District Court for the Eastern District of Texas, he was not in a right state of mind to make the decision to transfer the case, and that counsel should not have insisted that he

transfer this case. Because counsel was not appointed in this case, it appears that Plaintiff is referring to a prior case against the same defendants in this district, No. 3:07-CV-2025-D, which e voluntarily dismissed in June 2008. He asks that this case be reopened under Rule 60(b). (See doc. 9-1 at 2-3.)

II. FED. R. CIV. P. 60(b)

Rule 60(b) provides that a court may relieve a party from a final judgment or order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered earlier; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or it is based on an earlier judgment that has been reversed or vacated, or that applying the judgment prospectively is no longer equitable; or (6) any other reason that justifies relief. FED. R. CIV. PROC. 60(b)(1)-(6). A Rule 60(b) motion must be made within a reasonable time, and no longer than one year after judgment was entered under subsections (1), (2), and (3). *See* FED. R. CIV. P. 60(c)(1).

Plaintiff has not alleged or shown mistake, newly discovered evidence, fraud, or a void or satisfied judgment that would entitle him to relief under Rule 60(b)(1)-(5). His motion may therefore be construed as arising under the “catch-all” clause of Rule 60(b)(6). *See Hess v. Cockrell*, 281 F.3d 212, 215-16 (5th Cir. 2002). This clause is ““a residual clause used to cover unforeseen contingencies; that is, it is a means for accomplishing justice in exceptional circumstances.”” *Steverson v. GlobalSantaFe Corp.*, 508 F.3d 300, 303 (5th Cir. 2007) (quoting *Stipelcovich v. Sand Dollar Marine, Inc.*, 805 F. 2d 599, 604-05 (5th Cir. 1986)). Motions under this clause “will be granted only if extraordinary circumstances are present.” *Hess*, 281 F.3d at 216.

In *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396 (5th Cir. 1981), the Fifth Circuit set forth factors to consider when evaluating a motion under this clause: (1) that final judgments should not lightly be disturbed; (2) that a Rule 60(b) motion should not be used as a substitute for appeal; (3) that the rule should be liberally construed in order to achieve substantial justice; (4) whether, if the case was not decided on its merits due to a default or dismissal, the interest in deciding the case on its merits outweighs the interest in the finality of the judgment and there is merit in the claim or defense; (5) whether, if the judgment was rendered on the merits, the movant had a fair opportunity to present his claims; (6) whether there are intervening equities that would make it inequitable to grant relief; and (7) any other factors relevant to the justice of the judgment under attack. *Id.* at 402.

Plaintiff has not met these standards. This case was dismissed because he was barred from proceeding *in forma pauperis* and he did not pay the filing fee, and he is still barred from proceeding *in forma pauperis* by operation of the three-strikes rule. He has not shown that he is entitled to relief from the judgment in this case.

III. RECOMMENDATION

Plaintiff's motion for leave to file a Rule 60(b) motion and application to proceed *in forma pauperis* should be denied.

SIGNED this 22nd day of January, 2019.



IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE