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APPENDIX- A

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No: 18-2198

Filed: November 12, 2019

ALI DARWICH

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA

Defendant - Appellee

MANDATE

Pursuant to the court's disposition that was filed 09/20/2019 the mandate for this case hereby issues today.

COSTS: None

APPENDIX — B —

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-2198

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 20, 2019
DEBORAH S. HUNT, Clerk

ALI DARWICH,)
)
 Plaintiff-Appellant,)
)
 v.) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) MICHIGAN
 UNITED STATES OF AMERICA,)
)
 Defendant-Appellee.)
)
)

O R D E R

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

Ali Darwich, a federal prisoner proceeding pro se, appeals a district court order denying his Federal Rule of Civil Procedure 60(b)(6) motion for relief from an order denying his motion to return property. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).*

In January 2010, Darwich filed a motion to return property that federal agents had seized during December 31, 2008, searches of his home and business. The seized property included \$29,900 in cash, documents, passports, five computers, checks and checkbooks, and insurance claim forms. The government responded that Darwich and his wife were still being investigated by federal authorities and that the seized items were “needed as evidence.” The district court denied Darwich’s motion without prejudice, finding that Darwich and his wife remained subjects

of a federal criminal investigation and that the government, therefore, had a continuing interest in the seized property.

In September 2010, Darwich filed another motion for the return of property, alleging that he and his wife were no longer under federal investigation, were being held in the custody of Immigration and Customs Enforcement, and could be removed to Lebanon at any time. On November 4, 2010, the district court denied Darwich's motion without prejudice, finding that "the Government's interest in the property has not ceased; instead, an indictment was recently returned against both . . . Darwich [and his wife]." Because criminal proceedings were ongoing, the district court denied the motion without prejudice.

Over seven years later, on February 23, 2018, Darwich filed a "motion for reconsideration" of the district court's November 4, 2010, order. Although Darwich labeled his motion a "motion for reconsideration," he cited Rule 60(b)(6) as the basis for his motion. As Darwich alluded to in his motion, he was convicted in federal court in 2012 of seven counts of using fire to commit fraud, twelve counts of aiding and abetting wire fraud, thirteen counts of aiding and abetting mail fraud, and one count of conspiring to launder monetary instruments. *See United States v. Darwich*, 574 F. App'x 582, 584 (6th Cir. 2014). Darwich alleged that, in December 2017, District Court Judge Robert H. Cleland—the judge presiding over his criminal proceeding—held an ex parte meeting with the prosecutor and an agent of the Federal Bureau of Investigation and thereafter ordered the prosecutor to transfer the \$29,900 to the district court clerk to be applied toward Darwich's restitution obligation. He alleged that he had not agreed to the order and that he was not given notice or an opportunity to object to or appeal from the order. Darwich sought a hearing and the return of the \$29,900. The district court denied Darwich's motion as untimely, finding that Eastern District of Michigan Local Rule 7.1(h)(1) required a plaintiff to file a motion for reconsideration within fourteen days of the order being challenged.

On appeal, Darwich contends that his motion was filed under Rule 60(b)(6) and (d)(3). He argues that the district court erred by dismissing his motion as untimely, because a Rule 60(d)(3) motion can be filed at any time. He alleges that Judge Cleland committed fraud in his

criminal case. Darwich has also filed a motion to review the district court's order denying his motion for reconsideration, which is unnecessary.

As an initial matter, the district court erred by construing Darwich's motion as a motion for reconsideration filed under Local Rule 7.1(h)(1), because although Darwich stated that he was seeking "reconsideration" of the district court's November 4, 2010, order, he cited Rule 60(b)(6) as the authority upon which his motion was based. Nevertheless, we "may affirm on any grounds supported by the record even if different from the reasons of the district court." *Abercrombie & Fitch Stores, Inc. v. Am. Eagle Outfitters, Inc.*, 280 F.3d 619, 629 (6th Cir. 2002).

We review a district court's denial of a Rule 60(b) motion for an abuse of discretion. *Coyer v. HSBC Mortg. Servs., Inc.*, 701 F.3d 1104, 1110 (6th Cir. 2012) (per curiam). "Abuse of discretion is defined as a definite and firm conviction that the trial court committed a clear error of judgment." *Burrell v. Henderson*, 434 F.3d 826, 831 (6th Cir. 2006) (quoting *Amernational Indus., Inc. v. Action-Tungsram, Inc.*, 925 F.2d 970, 975 (6th Cir. 1991)).

Federal Rule of Civil Procedure 60(b)(6) states that a district court may grant relief from an order for "any . . . reason that justifies relief." A motion under Rule 60(b)(6) "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). Here, Darwich filed his Rule 60(b) motion more than seven years after the district court entered its November 4, 2010, order, which can hardly be characterized as a "reasonable time." *Id.*

Even assuming that the seven-year delay could be justified by the change in circumstances—namely, Judge Cleland's recent order that the seized money be used to satisfy Darwich's restitution obligation—Darwich was not entitled to relief on the merits. As the district court noted in its November 4, 2010, order, "[a] defendant's motion for return of property will be unavailing where the government has a continuing interest in the property." *United States v. Francis*, 646 F.2d 251, 263 (6th Cir. 1981). Because the seized money was ordered by the district court to be put toward Darwich's restitution obligation, the government had a continuing interest in the property. To the extent that Darwich sought to challenge the district court's determination that the money should be applied toward his restitution obligation, the

proper avenue for seeking relief would have been to appeal the order that the district court entered in his criminal case. Indeed, the record in Darwich's criminal case shows that Judge Cleland, on December 28, 2017, ordered the \$29,900 to be paid to the Clerk of the Court and applied towards Darwich's restitution obligation. Copies of the order were mailed to the attorneys and pro se parties, and Darwich was clearly aware of the order, because he filed a motion for reconsideration of that order.

Darwich argues on appeal that his motion was also filed pursuant to Rule 60(d)(3). Rule 60(d)(3) allows a district court to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(3). But Darwich's motion did not reference Rule 60(d)(3) and included no allegations that the district court's November 4, 2010, order was procured through fraud. Even on appeal, Darwich's allegations of fraud relate to conduct that occurred in his separate criminal proceeding, well after the November 4, 2010, order was entered.

Accordingly, we **DENY** as unnecessary Darwich's motion for appellate review and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX - C -

APPENDIX - C -.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALI DARWICH,

Plaintiff,

v.

Case No. 10-10775

UNITED STATES OF AMERICA,

Defendant.

ORDER DENYING MOTION FOR RECONSIDERATION

Before the court is a motion for reconsideration, filed by Plaintiff Ali Darwich, in which he seeks reconsideration of an order entered approximately eight years ago. In the Eastern District of Michigan, a party filing a motion for reconsideration must "demonstrate a palpable defect by which the court and the parties . . . have been misled" and "show that correcting the defect will result in a different disposition of the case." E.D. Mich. LR 7.1(h)(3). Such motions, however, must be brought within 14 days of the order which is challenged by the moving party. E.D. Mich. LR 7.1(h)(1). Plaintiff's motion, styled as a motion for reconsideration, is untimely. Accordingly,

IT IS ORDERED that Plaintiff's motion for reconsideration [Dkt. # 30] is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: September 28, 2018

APPENDIX - D -

Appendix - D --

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, Case No. 10-cr-20705
v. Hon. Robert H. Cleland
FATIMA HOUSSEIN TOUFAILI D-1,
ALI DARWICH D-4,
Defendants.

UNITED STATES
MARSHALS SERVICE
2010 JAN - 3 PM 4:28
DETROIT
EASTERN MICHIGAN

**EX PARTE ORDER DIRECTING UNITED STATES MARSHALS SERVICE
TO PAY FUNDS TO THE CLERK OF THE COURT FOR RESTITUTION**

Upon motion of the United States of America for an ex parte order directing the United States Marshals Service or its transferee to pay \$29,900.00 to the Clerk of the Court to be applied toward restitution owed by the above-captioned Defendants (Toufaili and Darwich), filed under seal, and the Court finding that no further notice of the motion need be given to the Defendants or any other person, now, therefore;

IT IS HEREBY ORDERED that the USMS or its designee shall deliver funds in the amount of \$29,900 seized during the execution of a search warrant at 30810 Embassy St., Franklin, Michigan on December 31, 2008, less any reasonable administrative costs, to the Clerk of the Court to be applied against the restitution owed by Fatima Toufaili and Ali Darwich.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

APPENDIX - E -

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALI HUSSEIN DARWICH,

Movant,

v.

Case No. 10-CV-10775

UNITED STATES OF AMERICA,

Defendant.

**ORDER DENYING WITHOUT PREJUDICE DARWICH'S
SEPTEMBER 17, 2010, "MOTION FOR RETURN OF SEIZED ITEMS, DOCUMENTS,
AND PASSPORTS, AND CASH"**

Before the court is Movant Ali Hussein Darwich's "Motion for Return of Seized Items, Documents, and Passports, and Cash," filed on September 17, 2010. In his motion, Darwich seeks a return of property seized by the Government pursuant to a search warrant. The court denied a similar motion on March 30, 2010. Specifically, the court noted that criminal investigations and proceedings against Mr. Darwich and his significant other, Fatima Toufaili, were yet on-going and the Government had therefore demonstrated a continuing interest in the seized property. (3/30/10 Order at 3-4.) The court pointed out that "[a] defendant's motion for return of property will be unavailing where the government has a continuing interest in the property." *United States v. Francis*, 646 F.2d 251, 263 (6th Cir. 1981) (citing *United States v. Premises Known as 608 Taylor Avenue*, 584 F.2d 1297, 1303 (3d Cir. 1978)).

Since that time, the Government's interest in the property has not ceased; instead, an indictment was recently returned against both Toufaili and Darwich. "The

general rule is that seized property, other than contraband, should be returned to its rightful owner *once the criminal proceedings have terminated.*" *United States v. LaFatch*, 565 F.2d 81, 83 (6th Cir. 1977) (emphasis added) (citing *McSurley v. Ratliff*, 398 F.2d 817 (6th Cir. 1968)). Criminal proceedings have not terminated, but have only recently begun against Darwich. Accordingly, Darwich's motion will again be denied.

IT IS ORDERED that Darwich's September 17, 2010, "Motion for Return of Seized Items, Documents, and Passports, and Cash" [Dkt. # 24] is DENIED WITHOUT PREJUDICE.¹

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 4, 2010

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 4, 2010, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522

S:\Cleland\JUDGE'S DESK\IC3 ORDERS\108-51225.DARWICH.DenyReturnProperty.September2010.wpd

¹The court also notes that a letter from Darwich to the court was docketed on August 4, 2010. The court does not respond to letters from litigants, even pro se litigants, particularly where, as here, Darwich has demonstrated he knows how to file motions seeking relief. The court admonishes Darwich that he must comply with the local rules when filing any documents and any letters in the future will be stricken from the docket.

APPENDIX - F -

No. 18-2198

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Nov 01, 2019

DEBORAH S. HUNT, Clerk

ALI DARWICH,

)

Plaintiff-Appellant,

)

v.

)

UNITED STATES OF AMERICA,

)

Defendant-Appellee.

)

)

)

ORDER

BEFORE: NORRIS, SILER, and SUTTON, 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