

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

August 19, 2019

Elisabeth A. Shumaker
Clerk of Court

ANTHONY EARL RIDLEY,

Plaintiff - Appellant,

v.

BOARD OF SEDGWICK COUNTY
COMMISSIONERS; JEFF EASTER,
Sheriff, Sedgwick County Sheriff's Office;
COUNTY OF SEDGWICK; SAM
BROWNBACK; GOVERNOR
CONSTITUENT SERVICES OFFICE;
STATE OF KANSAS; SANDI (LNU),
Chaplain; (FNU) KASPER, Chaplain,

Defendants - Appellees.

No. 19-3104
(D.C. No. 5:18-CV-03097-SAC)
(D. Kan.)

ORDER AND JUDGMENT*

Before CARSON, BALDOCK, and MURPHY, Circuit Judges.

Anthony Earl Ridley, proceeding pro se, appeals from the district court's May 8, 2019 Order denying his "Motion for Partial Reconsideration." The district court correctly construed this motion as seeking relief under Fed. R. Civ. P. 60(b). This

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G).* The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

"Appendix A."

court reviews for abuse of discretion an order of the district court denying relief under Rule 60(b). *Walters v. Wal-Mart Stores, Inc.*, 703 F.3d 1167, 1172 (10th Cir. 2013). “Relief under Rule 60(b) . . . is extraordinary and may only be granted in exceptional circumstances.” *Yapp v. Excel Corp.*, 186 F.3d 1222, 1231 (10th Cir. 1999) (quotation omitted).

Ridley’s frivolous appellate filings do not come close to demonstrating the kind of extraordinary circumstances necessary to obtain Rule 60(b) relief. Instead, as aptly noted by the district court, the relevant Motion was merely one of many such motions seeking to relitigate the case after the district court entered an order dismissing Ridley’s amended complaint. That being the case, Ridley has utterly failed to demonstrate the district court abused its discretion in denying the Motion. Accordingly, Ridley’s appeal is hereby **DISMISSED**. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). Our dismissal of Ridley’s appeal on the ground it is frivolous, when coupled with other strikes Ridley has accrued, means he is subject to the limitations on proceeding in forma pauperis set out in 28 U.S.C. § 1915(g). That is, absent a showing he is “under imminent danger of serious physical injury,” Ridley is precluded from bring a civil action or appeal in forma pauperis. In light of this court’s dismissal of Ridley’s appeal, his “Motion for Temporary Restraining Order

and Preliminary Injunction" is **DENIED** as moot.

Entered for the Court

Michael R. Murphy
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY EARL RIDLEY,

Plaintiff,

v.

CASE NO. 18-3097-SAC

BOARD OF SEDGWICK COUNTY
COMMISSIONERS, et al.,

Defendants.

ORDER

Plaintiff Anthony Earl Ridley brings this *pro se* civil rights action under 42 U.S.C. § 1983. Although Plaintiff was incarcerated at the Lansing Correctional Facility at the time of filing, the acts giving rise to his Complaint occurred while he was in custody at the Sedgwick County Detention Facility. The Court granted his motion to proceed *in forma pauperis*.

Plaintiff alleges in his Complaint that he was denied a special diet and religious text in accordance with his Hindu religion, and that he was excluded from chaplain services. On July 18, 2018, the Court entered a Memorandum and Order and Order to Show Cause (Doc. 5) (“MOSC”), granting Plaintiff until August 17, 2018, to either show good cause why his Complaint should not be dismissed or to file a proper amended complaint. Plaintiff filed an Amended Complaint (Doc. 6).

The Court found in the MOSC that: Plaintiff’s Complaint is subject to dismissal based on his failure to exhaust available administrative remedies before filing this action; this action is subject to dismissal as against the Board of Sedgwick County Commissioners, Sedgwick County and Sheriff Jeff Easter because Plaintiff has not alleged the requisite causative custom or policy;

Plaintiff failed to allege personal participation by the two John Doe Chaplains; Plaintiff's claims against Sam Brownback, the Governor's Constituent Services Office, the State of Kansas, and any other state agency or employee are subject to summary dismissal based on sovereign immunity; Plaintiff's bare conspiracy allegations fail to state a claim upon which relief may be granted; because Plaintiff is no longer detained at the Sedgwick County Detention Facility, his requests for injunctive relief are moot; Plaintiff's request for compensatory damages is barred by 42 U.S.C. § 1997e(e), because Plaintiff has failed to allege a physical injury; and Plaintiff presents no plausible basis for a claim of punitive damages because he alleges no facts whatsoever establishing that any defendant acted with a sufficiently culpable state of mind.

On December 4, 2018, the Court entered a Memorandum and Order (Doc. 7) finding that Plaintiff's Amended Complaint fails to address the deficiencies set forth in the MOSC. The Court found that: although it does not appear that Plaintiff completed the formal grievance procedures,¹ even if Plaintiff exhausted his administrative remedies, the Amended Complaint fails to state a valid claim for relief; Plaintiff's Amended Complaint fails to address why his request for injunctive relief is not moot now that he is no longer incarcerated; Plaintiff's request for compensatory damages is barred by 42 U.S.C. § 1997e(e), because Plaintiff has failed to allege a physical injury; and Plaintiff presents no plausible basis for a claim of punitive damages because he alleges no facts whatsoever establishing that any defendant acted with a sufficiently culpable state of mind.

¹ The Court notes that on January 12, 2018, Plaintiff filed *Ridley v. Sedgwick Cty. Sheriff's Office*, Case No. 18-3011-SAC, based on the same claims as the instant case. At the time of filing Case No. 18-3011-SAC, Plaintiff was incarcerated at the Lansing Correctional Facility, and was no longer housed at the Sedgwick County Detention Center. In that case, Plaintiff stated on his complaint that he did not exhaust his administrative remedies because he had been led to believe that his alleged incident was not a grievable matter. (Doc. 1, at 12.) That case was dismissed on April 25, 2018, for failure to exhaust administrative remedies. (Doc. 7.) Plaintiff filed the instant case on April 13, 2018.

On December 17, 2018, Plaintiff filed a motion for reconsideration (Doc. 9), asking the Court to reconsider its December 4, 2018 Memorandum and Order. On December 21, 2019, the Court denied Plaintiff's motion for reconsideration. (Doc. 10). On March 13, 2019, Plaintiff filed another motion for reconsideration (Doc. 11), once again asking the Court to reconsider its December 4, 2018 Memorandum and Order. Plaintiff styles his motion as a "Motion for Reconsideration of Void Judgment and Partial Summary Judgment." Plaintiff argues that he is seeking summary judgment on his claims against the Board of County Commissioners of Sedgwick County and against the State of Kansas. Plaintiff then argues that the Defendants violated the Equal Protection Clause, and cites case law regarding "deliberate indifference," "due process," and "equal protection."

Local Rule 7.3 provides that "[p]arties seeking reconsideration of dispositive orders or judgments must file a motion pursuant to Fed. R. Civ. P. 59(e) or 60." D. Kan. Rule 7.3(a). Because Plaintiff's motion was filed more than 28 days after the entry of the order, the Court will treat it as a motion under Rule 60. *See* Fed. R. Civ. P. 59(e) ("A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.")

Plaintiff's motion is treated as a motion filed under Rule 60(b) of the Federal Rules of Civil Procedure, seeking relief from judgment entered in this matter. *See Weitz v. Lovelace Health System Inc.*, 214 F.3d 1175, 1178 (10th Cir. 2000). Rule 60(b) provides in relevant part that:

On motion and just terms, the court may relieve a party or its legal representative 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 under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an

opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

A Rule 60(b) motion provides extraordinary relief which “may only be granted in exceptional circumstances.” *Amoco Oil Co. v. United States Environmental Protection Agency*, 231 F.3d 694, 697 (10th Cir. 2000). The decision to grant such relief “is extraordinary and may only be granted in exceptional circumstances.” *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1009 (10th Cir. 2000) (quotation marks omitted).

Plaintiff does not assert relief under any of the subsections in Rule 60(b), but he does title his motion as a “motion for reconsideration of void judgment.” Rule 60(b)(4) provides that the Court may relieve a party from a final judgment if the judgment is void. Fed. R. Civ. P. 60(b)(4). “A judgment is void only if the court which rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process of law.” *Alford v. Cline*, 2017 WL 2473311, at *2 (10th Cir. June 8, 2017) (unpublished) (quoting *United States v. Buck*, 281 F.3d 1336, 1344 (10th Cir. 2002)). “Because § 1915A requires a district court to dismiss a prisoner’s civil action for failure to state a claim as soon as practicable, a judgment dismissing such an action before service of process isn’t void for lack of personal jurisdiction.” *Robertson v. Kansas*, 624 F. App’x 969, 971 (10th Cir. 2015) (unpublished).

Due process is satisfied if “fundamental procedural prerequisites—particularly, adequate notice and opportunity to be heard—were fully satisfied.” *Alford*, 2017 WL 2473311, at *2 (quoting *Orner v. Shalala*, 30 F.3d 1307, 1310 (10th Cir. 1994)). Plaintiff does not dispute that he received adequate notice or the opportunity to present his arguments. See *United States v.*

Rogers, 657 F. App'x 735, 738 (10th Cir. 2016) (unpublished) (finding that Rule 60(b)(4) argument failed where the court considered party's claims, discussed the claims, and adequately addressed party's arguments). A judgment is not void merely because it is or may have been erroneous. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010); *Buck*, 281 F.3d at 1344 ("[A] judgment is not void merely because it is erroneous."). A Rule 60(b)(4) motion "is not a substitute for a timely appeal." *Espinosa*, 559 U.S. at 270 (citations omitted).

Plaintiff has not shown that relief under Rule 60(b)(4) or any other subsection of Rule 60(b) is warranted. The motion is denied.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff's motion for reconsideration (Doc. 11) is **DENIED**.

IT IS SO ORDERED.

Dated this 27th day of March, 2019, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U. S. Senior District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY EARL RIDLEY,

Plaintiff,

v.

CASE NO. 18-3097-SAC

BOARD OF SEDGWICK COUNTY
COMMISSIONERS, et al.,

Defendants.

ORDER

Plaintiff Anthony Earl Ridley brings this *pro se* civil rights action under 42 U.S.C. § 1983. On July 18, 2018, the Court entered a Memorandum and Order and Order to Show Cause (Doc. 5) (“MOSC”), granting Plaintiff until August 17, 2018, to either show good cause why his Complaint should not be dismissed or to file a proper amended complaint. Plaintiff filed an Amended Complaint (Doc. 6). On December 4, 2018, the Court entered a Memorandum and Order (Doc. 7) finding that Plaintiff’s Amended Complaint fails to address the deficiencies set forth in the MOSC and dismissing the matter for failure to state a claim. On December 17, 2018, Plaintiff filed a motion for reconsideration (Doc. 9), asking the Court to reconsider its December 4, 2018 Memorandum and Order. On December 21, 2019, the Court denied Plaintiff’s motion for reconsideration. (Doc. 10). On March 13, 2019, Plaintiff filed another motion for reconsideration (Doc. 11), once again asking the Court to reconsider its December 4, 2018 Memorandum and Order. On March 27, 2019, the Court entered an Order (Doc. 14) denying Plaintiff’s motion for reconsideration.

Plaintiff has now filed a “Motion for Judgment on Proceedings” (Doc. 15). Plaintiff’s motion purports to again seek “reconsideration of void judgment and partial summary judgment.” The motion sets forth summary judgment standards and rehashes Plaintiff’s arguments on the merits of his case. Plaintiff’s motion for reconsideration is denied for the same reasons set forth in the Court’s Order at Doc. 14. Plaintiff’s request for partial summary judgment is completely frivolous. This case was dismissed for failure to state a claim, and defendants were never served because the case did not survive the Court’s screening under 28 U.S.C. § 1915A. This case remains closed.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff’s Motion for Judgment on Proceedings (Doc. 15) is **DENIED**.

IT IS SO ORDERED.

Dated this 29th day of March, 2019, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U. S. Senior District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY EARL RIDLEY,

Plaintiff,

v.

CASE NO. 18-3097-SAC

BOARD OF SEDGWICK COUNTY
COMMISSIONERS, et al.,

Defendants.

ORDER

Plaintiff Anthony Earl Ridley brings this *pro se* civil rights action under 42 U.S.C. § 1983. On July 18, 2018, the Court entered a Memorandum and Order and Order to Show Cause (Doc. 5) (“MOSC”), granting Plaintiff until August 17, 2018, to either show good cause why his Complaint should not be dismissed or to file a proper amended complaint. Plaintiff filed an Amended Complaint (Doc. 6). On December 4, 2018, the Court entered a Memorandum and Order (Doc. 7) finding that Plaintiff’s Amended Complaint fails to address the deficiencies set forth in the MOSC and dismissing the matter for failure to state a claim. On December 17, 2018, Plaintiff filed a motion for reconsideration (Doc. 9), asking the Court to reconsider its December 4, 2018 Memorandum and Order. On December 21, 2019, the Court denied Plaintiff’s motion for reconsideration. (Doc. 10). On March 13, 2019, Plaintiff filed another motion for reconsideration (Doc. 11), once again asking the Court to reconsider its December 4, 2018 Memorandum and Order. On March 27, 2019, the Court entered an Order (Doc. 14) denying Plaintiff’s motion for reconsideration. On March 28, 2019, Plaintiff filed a “Motion for Judgment on Proceedings” (Doc. 15). On March 29, 2019, the Court entered an Order (Doc. 16) denying the motion.

On May 2, 2019, Plaintiff filed another “Motion for Partial Reconsideration” (Doc. 17). Plaintiff’s motion rehashes his frivolous argument that sovereign immunity either doesn’t exist or is a “mistake.” Plaintiff argues that the “historical basis for sovereign immunity is incorrect” and “only the repetition of mistakes of historical fact account for the doctrine’s vitality.” (Doc. 17, at 18.) Plaintiff also claims to have “newly discovered prima facie evidence that the Plaintiff submitted with this Court showing the physical injury of pain and life threatening blood pressure rate caused by the Defendant’s ‘Deliberate Indifference’.” (Doc. 17, at 12–13.) Plaintiff claims his allegations are sufficient to show deliberate indifference to his serious “religious” needs in violation of the Eighth Amendment. (Doc. 17, at 15.) In the Court’s Order at Doc. 10, the Court found that “Plaintiff’s argument that his claim should be considered as an Eighth Amendment claim does not address the deficiencies set forth in this MOSC and December 4, 2018 Memorandum and Order.

Plaintiff continues to rehash his arguments and presents no basis for relief under Fed. R. Civ. P. 60(b). For all the reasons previously set forth in the Court’s Orders at Docs. 10, 14 and 16, the Court likewise denies Plaintiff’s current motion for partial reconsideration. Future repetitive motions will be subject to summary rejection.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff’s Motion for Partial Reconsideration (Doc. 17) is **DENIED**.

IT IS SO ORDERED.

Dated this 8th day of May, 2019, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U. S. Senior District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY EARL RIDLEY,

Plaintiff,

v.

CASE NO. 18-3097-SAC

BOARD OF SEDGWICK COUNTY
COMMISSIONERS, et al.,

Defendants.

O R D E R

Plaintiff Anthony Earl Ridley brings this *pro se* civil rights action under 42 U.S.C. § 1983. On May 8, 2019, the Court denied Plaintiff's Motion for Partial Reconsideration at Doc. 17. (Doc. 19.) On May 20, 2019, Plaintiff filed a Notice of Appeal (Doc. 20). This matter is before the Court on Plaintiff's motion for leave to appeal in forma pauperis (Doc. 25) filed on May 20, 2019. The Application and attached inmate account statement show insufficient funds to pay the filing fee. Accordingly,

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff's motion for leave to appeal in forma pauperis (Doc. 25) is **granted**. Plaintiff shall remain obligated to pay the full filing fee in installments calculated under 28 U.S.C. § 1915(b)(2).

Copies of this order shall be transmitted to Plaintiff and to the Clerk of the U.S. Court of Appeals for the Tenth Circuit.

IT IS SO ORDERED.

Dated this 28th day of May, 2019, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U. S. Senior District Judge