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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-1882

[Filed: March 25, 2020]

HO WON JEONG,

Plaintiff - Appellant,

v.

ANGEL CABRERA; S. DAVID WU; KEVIN AVRUCH,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Anthony John Trenga, District Judge. (1:18-cv-00443-AJT-TCB)

Submitted: March 12, 2020 Decided: March 25, 2020

Before FLOYD, THACKER, and RUSHING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Richard F. Hawkins, III, THE HAWKINS LAW FIRM, PC, Richmond, Virginia, for Appellant. Mark R. Herring, Attorney General, Toby J. Heytens, Solicitor General, Cynthia V. Bailey, Deputy Attorney General, Deborah A. Love, Senior Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia; Brian Walther, University Counsel, Senior Assistant Attorney General, Eli S. Schlam, Associate University Counsel, Assistant Attorney General, Office of University Counsel, GEORGE MASON UNIVERSITY, Fairfax, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ho Won Jeong appeals from the district court's order denying his Fed. R. Civ. P. 60(b)(3) motion for reconsideration of the dismissal of his complaint. The district court ruled that Jeong's motion was untimely filed over eleven months after the district court's order dismissing his suit. On appeal, Jeong asserts that, given his pro se status, the district court should have

sought further information or held a hearing. We affirm.

Disposition of a Rule 60(b) motion is within the discretion of the district court, and such rulings will not be overturned absent an abuse of that discretion. *McLawhorn v. John W. Daniel & Co.*, 924 F.2d 535, 538 (4th Cir. 1991). In addition, the rule provides a remedy that "is extraordinary and is only to be invoked upon a showing of exceptional circumstances." *Id.* Jeong brought his motion under subsection (3) of Rule 60(b), which further requires a showing of fraud, misrepresentation, or misconduct of an adverse party.

In order to qualify for relief under Rule 60(b), the moving party must file the motion "within a reasonable time--and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). Moreover, "the movant must make a showing of timeliness." *Werner v. Carbo*, 731 F.2d 204, 206-07 (4th Cir. 1984). We have held that "a Rule 60(b) motion is not timely brought when it is made three to four months after the original judgment and no valid reason is given for the delay." *McLawhorn,* 924 F.2d at 538. Jeong's motion was not filed until over eleven months after his complaint was dismissed.

A document filed pro se is to be liberally construed. *Erickson v. Pardus,* 551 U.S. 89, 94 (2007). However, this solicitude does not transform the district court into an advocate for the pro se litigant. *United States v. Wilson,* 699 F.3d 789, 797 (4th Cir. 2012). Here, Jeong did not address in district court the Appellees' argument that he failed to provide any reason for his

delay. In fact, even on appeal (represented by counsel), Jeong does not dispute that all the evidence underlying his Rule 60(b) motion was available to him when he (through counsel) was litigating the motion to dismiss the complaint. Jeong does not argue that his reasons for delay raised complicated factual or legal issues, and in any event, these reasons were strictly within Jeong's knowledge.

Appellees placed Jeong on notice that he needed to show that his motion was filed within a reasonable time, and Jeong simply failed to address the issue in any meaningful way. Given that Jeong had the opportunity to respond to a clearly delineated issue and that he neither did so nor requested further time or assistance, we find that the district court did not abuse its discretion in denying the Rule 60(b) motion without further inquiry or a hearing. Accordingly, we affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 1: 18-cv-443 (AJT/TCB)

[Filed: July 17, 2019]

HO WON JEONG,	)
	)
Plaintiff,	)
	)
v.	)
	)
ANGEL CABRERA, *et al.*,	)
	)
Defendants.	)
	)

ORDER

Pending before the Court is *pro se* Plaintiff Ho Won Jeong's Motion to Reopen, Reconsider and Reverse Grant of Defendant's Motion to Dismiss [Doc. No. 24] (the "Motion for Reconsideration"), in which he seeks reconsideration of the Court's July 13, 2018 Order dismissing this action [Doc. No. 15] (the "Order"). Plaintiff seeks reconsideration of the Order pursuant to Federal Rule of Civil Procedure 60(b)(3), which provides that "[o]n motion and just terms, the court may relieve a party . . . from a final judgment, order or

proceeding" on the basis of "'fraud . . . , misrepresentation, or misconduct by an opposing party." Specifically, Plaintiff seeks reconsideration based on alleged misrepresentations by Defendants' counsel in the motion to dismiss briefs and oral argument and newly-alleged fraud in the post-tenure review process.

Pursuant to Fed. R. Civ. P. 60(c)(1), all motions under Rule 60(b) "must be made within a reasonable time," and motions under Rule 60(b)(3) must be made "no more than a year after the entry of the judgment or order or the date of the proceeding." Even when a party moves for reconsideration pursuant to Rule 60(b)(3) within the one-year time limit, "they must also show that their motion was made within a reasonable time." *Kincer v. First Am. Nat'l Bank,* 2004 WL 57085, at *1 (W.D.V.A. Jan. 12, 2004). "Under Rule 60(b), timeliness must be shown by the movant." *Holland v. Virginia Lee Co.*, 188 F.R.D. 241, 248 (W.D.V.A. 1999). The Fourth Circuit has "held on several occasions that a Rule 60(b) motion is not timely brought when it is made three to four months after the original judgment and no valid reason is given for the delay." *McLawhorn v. John W. Daniel & Co.*, 924 F.2d 535, 538 (4th Cir. 1991)

Here, Plaintiff moved for reconsideration under Rule 60(b)(3) on June 26, 2019, eleven months and thirteen days after the Order was entered, within the one-year time limit imposed by Rule 60(c), but far longer than the three to four months the Fourth Circuit has held is unreasonable absent a valid explanation. Plaintiff has offered no explanation whatsoever for this delay. Furthermore, he does not identify any new

information that recently became known to him or any other basis for reconsideration that was unknown to him when the Order was entered in July 2018. Absent such an explanation, Plaintiff's motion is untimely. Accordingly, it is hereby

ORDERED that Plaintiff Ho Won Jeong's Motion to Reopen, Reconsider and Reverse Grant of Defendant's Motion to Dismiss [Doc. No. 24] be, and the same hereby is, DENIED; and the hearing on the Motion currently scheduled for Friday, July 19, 2019 at 10:00 a.m. be, and the same hereby is, CANCELED.

This is a Final Order for purposes of appeal. To appeal, Petitioner must file a written notice of appeal with the Clerk's Office within thirty (30) days of the date of this Order as required by Rules 3 and 4 of the Federal Rules of Appellate Procedure. A written notice of appeal is a short statement stating a desire to appeal this Order along with the date of the Order Petitioner wants to appeal. Petitioner need not explain the grounds for appeal until so directed by the court.

The Clerk is directed to forward copies of this Order to all counsel of record and to the *pro se* Plaintiff at his listed address.

/s/ Anthony J. Trenga
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
July 17, 2019

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Civil Action No. 1:18-cv-0443 (AJT/TCB)

[Filed: July 13, 2018]

HO WON JEONG,	)
	)
Plaintiff,	)
	)
v.	)
	)
ANGEL CABRERA *et al.*,	)
	)
Defendants.	)
	)

ORDER

This matter is before the Court on Defendants' Motion to Dismiss [Doc. No. 5] (the "Motion"). On July 13, 2018, the Court held a hearing on the Motion. Upon consideration of the Motion, the memoranda of law and exhibits in support thereof and in opposition thereto, the arguments of counsel, and for the reasons stated in open court during the July 13, 2018 hearing, it is hereby

ORDERED that Defendants' Motion to Dismiss [Doc. No. 5] be, and the same hereby is, GRANTED, and this action be, and the same hereby is, DISMISSED as to all Defendants.

The Clerk is directed to forward copies of this Order to all counsel of record.

/s/ Anthony J. Trenga
Anthony J. Trenga
United States District Judge

July 13, 2018
Alexandria, Virginia

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 19-1882
(1:18-cv-00443-AJT-TCB)

[Filed: May 11, 2020]

HO WON JEONG	)
	)
Plaintiff - Appellant	)
	)
v.	)
	)
ANGEL CABRERA; S. DAVID WU; KEVIN AVRUCH	)
	)
Defendants - Appellees	)

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Floyd, Judge Thacker and Judge Rushing.

For the Court

/s/ Patricia S. Connor, Clerk