APPENDIX

APPENDIX A: DKT. 116 - 9/4/2019 — ORDER BY DISTRICT COURT DENYING RULE 60(B)(6) MOTION.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SABINA BURTON,

Plaintiff,

v.

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, THOMAS CAYWOOD, ELIZABETH THROOP, and MICHAEL DALECKI,

Defendants.

ORDER

14-cv-274-jdp

Plaintiff Sabina Burton filed this lawsuit in 2014, alleging discrimination and retaliation by University of Wisconsin—Platteville officials. In 2016, I granted defendants' motion for summary judgment and dismissed the case because I concluded that no reasonable jury could find in Burton's favor. Dkt. 90. That decision was affirmed on appeal. *See Burton v. Bd. of Regents of Univ. of Wisconsin Sys.*, 851 F.3d 690 (7th Cir. 2017). Now, almost three and a half years after I entered judgment for defendants, Burton has filed a pro se motion to vacate the judgment entered against her under Federal Rule of Civil Procedure 60(b)(6). Dkt. 113. She contends that relief from judgment under Rule 60 is warranted because "[i]mportant, material documents that were used as basis for [her] dismissal were withheld and hidden from her" in her 2014 case. Dkt. 115, at 3.

I will deny Burton's motion because Rule 60 does not afford the relief that she seeks. Under Rule 60(b), a court may relieve a party from a final judgment and re-open the case for any of 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 . . ., 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.

Burton is seeking relief from judgment because of newly discovered evidence, as provided under Rule 60(b)(2). The problem is that a motion under Rule 60(b) "must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment." Fed. R. Civ. P. 60(c). Here, it has been more than three years since the entry of judgment, so any motion to reopen the case under Rule 60(b)(2) is untimely. Rule 60(b)'s one-year time limit "is jurisdictional and cannot be extended." *Arrieta v. Battagli*, 461 F.3d 861, 864 (7th Cir. 2006). This is so even where the moving party is not at fault for the failure to discover the evidence in question, and even when the newly discovered evidence would have a significant bearing on the case. *See Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Cargage Co.*, 69 F.3d 1312, 1315 (7th Cir. 1995) ("[T]here is no exception to Rule 60(b)(2) for 'conclusive' evidence.").

Burton attempts to circumvent these rules by framing her motion as brought under Rule 60(b)(6), which carries no fixed time limit for filing. But "if the asserted ground for relief falls within one of the enumerated grounds for relief subject to the one-year time limit of Rule 60(b), relief under the residual provision of Rule 60(b)(6) is not available. To permit relief under the catchall provision in such situations would render the one-year time limitation meaningless."

Arrieta, 461 F.3d at 865 (internal citations omitted). Burton's motion is premised entirely on the alleged discovery of new evidence, so it does not qualify for relief under Rule 60(b)(6).

Because Burton's Rule 60(b) motion is untimely, I will deny her request to vacate the 2016 judgment.

ORDER

IT IS ORDERED that plaintiff Sabina Burton's motion for relief from judgment under Rule 60(b), Dkt. 113, is DENIED.

Entered September 4, 2019.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge

APPENDIX B: DKT. 118 – 9/19/19 – TEXT ONLY ORDER BY DISTRICT COURT DENYING MOTION FOR RECONSIDERATION OF RULE 60(B)(6) MOTION.

Activity in Case 3:14-cv-00274-jdp Burton, Sabina v. Board of Regents of the University of Wisconsin System et al Order on Motion for Reconsideration

wiwd_ecf@wiwd.uscourts.gov

Thu 9/19/2019 11:57 AM

To: wiwd_nef@wiwd.uscourts.gov <wiwd_nef@wiwd.uscourts.gov>

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U.S. District Court

Western District of Wisconsin

Notice of Electronic Filing

The following transaction was entered on 9/19/2019 at 1:57 PM CDT and filed on 9/19/2019

Case Name: Burton, Sabina v. Board of Regents of the University of Wisconsin System et al
Case Number: 3:14-cv-00274-jdp
Filer:
WARNING: CASE CLOSED on 03/18/2016
Document Number: 118(No document attached)

Docket Text:
** TEXT ONLY ORDER **
Plaintiff Sabina Burton has filed a motion for reconsideration of my September 4, 2019 order denying her motion for relief from judgment under Rule 60(b). Dkt. [117]. She cites no authority that persuades me that my decision was incorrect, so her motion is DENIED. If Burton disagrees with my decision, her remedy is to file an appeal. I will not consider any additional motions on this issue. Signed by District Judge James D. Peterson on 9/19/2019. (rks),(ps)

3:14-cv-00274-jdp Notice has been electronically mailed to:

Anne Maryse Bensky benskyam@doj.state.wi.us, mauksc@doj.state.wi.us

Katherine D. Spitz spitzkd@doj.state.wi.us, mauksc@doj.state.wi.us

Sabina Burton sabinaburton@live.com

3:14-cv-00274-jdp Notice will be delivered by other means to::

APPENDIX C: DKT. 121 – 3/11/20 – ORDER BY DISTRICT COURT DENYING RULE 37 MOTION.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SABINA BURTON,

Plaintiff,

v.

ORDER

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, THOMAS CAYWOOD, ELIZABETH THROOP, and MICHAEL DALECKI,

14-cv-274-jdp

Defendants.

Plaintiff Sabina Burton has filed yet another motion seeking to reopen this long-closed case. Dkt. 119. Again, she contends that defendants withheld documents in discovery, which is an issue she has raised before. Dkt. 113. In my last order, I told her that I would not consider any additional motions on this issue. Dkt. 118.

This time, she invokes the "fraud on the court" doctrine, under which a court may exercise its inherent authority to set aside a judgment obtained by fraud even after the statutory period for seeking relief from a final judgment has expired. *See Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 244 (1944), *overruled on other grounds by Standard Oil Co. of Cal. v. United States*, 429 U.S. 17 (1976); Fed. R. Civ. P. 60(d)(3). Despite the invocation of a new legal doctrine, she's raising the same issue yet again, and I will deny her motion.

The new doctrine wouldn't help anyway. Other than in patent cases, the "fraud on the court" doctrine is "interpreted narrowly" to include only "corruption of the judicial process itself." *Matter of Met-L-Wood Corp.*, 861 F.2d 1012, 1018 (7th Cir. 1998). Discovery violations do "not constitute the type of extraordinary circumstances which would justify relief . . . on

the basis of fraud on the court." *Marquip, Inc. v. Fosber Am., Inc.*, 30 F. Supp. 2d 1142, 1146 (W.D. Wis. 1998), *aff'd*, 198 F.3d 1363 (Fed. Cir. 1999).

ORDER

IT IS ORDERED that plaintiff Sabina Burton's motion for relief from judgment and spoliation sanctions, Dkt. 119, is DENIED.

Entered March 11, 2020.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge

APPENDIX D: APPEAL DKT. 17 – 8/28/20 – ORDER BY APPELLATE COURT AFFIRMING DISTRICT COURT'S DECISION.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted August 26, 2020*
Decided August 28, 2020

Before

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 20-1579

SABINA BURTON,
Plaintiff-Appellant,

v.

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 14-cv-274-jdp

James D. Peterson,
Chief Judge.

ORDER

Sabina Burton, formerly a tenured professor at the University of Wisconsin-Platteville, appeals the denial of her second post-judgment motion seeking to set aside the dismissal of her employment-discrimination suit against the school's Board of Regents and three individual defendants. *See* Title VII of the Civil Rights Act of 1964,

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* We have agreed to decide this appeal without oral argument because the briefs and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

42 U.S.C. § 2000e-3(a); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* The district court denied the motion as duplicative of an earlier motion it had denied and, in any case, inapplicable. We affirm.

This is the second time that Burton has asked us to review the proceedings of her suit. In a prior appeal, we upheld the entry of summary judgment for the Board on both the Title VII and Title IX claims. *See Burton v. Bd. of Regents of the Univ. of Wis. Sys.*, 851 F.3d 690, 696–97 (7th Cir. 2017).

Nearly two and a half years later, Burton moved to set aside the judgment on grounds that the defendants, during discovery, had withheld documents that supported her theory of retaliation. The district court construed her motion under Federal Rule of Civil Procedure 60(b)(2)—as a request for relief based on newly discovered evidence—and denied it as untimely because she had not filed it within a year of entry of judgment. *See* FED. R. CIV. P. 60(c). Burton next sought reconsideration, which the court also denied, warning her that it would not consider any additional motions on the issue.

Burton nevertheless moved again to reopen the case, reiterating her belief that the defendants had withheld documents improperly. Their misconduct, she now asserted, amounted to a "fraud on the court" under Rule 60(b)(3). Unlike other provisions under Rule 60(b), this provision sets no time limit on a court's power to set aside a judgment. The court denied this motion too, however, pointing out that she was "raising the same issue yet again" and that in any event, the doctrine would not apply because it covers only extraordinary circumstances such as corruption of the judicial process—far from the civil discovery violations alleged here.

On appeal, Burton challenges this ruling and maintains that defendants committed fraud on the court by withholding evidence in bad faith. The three cases she cites in support, however, are all inapposite. *See Matter of Met-L-Wood Corp.*, 861 F.2d 1012, 1019 (7th Cir. 1988) (noting only that ex parte contact by a judge is not fraud on the court); *Domanus v. Lewicki*, 742 F.3d 290, 302 (7th Cir. 2014) (concluding that "mosaic" of discovery abuses warranted grant of default judgment but not mentioning "fraud on the court"); *Oliver v. Gramley*, 200 F.3d 465, 466 (7th Cir. 1999) (not mentioning discovery violations). As the defendants note, we previously have upheld a district court's decision to "reasonably dr[a]w a line between an apparent discovery violation and fraud [on the court]." *Wickens v. Shell Oil Co.*, 620 F.3d 747, 759 (7th Cir. 2010); *see also Kennedy v. Schneider Elec.*, 893 F.3d 414, 419 (7th Cir. 2018) (discovery

violations do not corrupt the judicial process itself). The district court here acted well within its discretion by concluding that the alleged violations did not cross that line.

We have considered Burton's other contentions and none has merit.

AFFIRMED