

NOT RECOMMENDED FOR PUBLICATION

No. 19-4040

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Dec 22, 2020
DEBORAH S. HUNT, Clerk

MAURICE MOORE,
Plaintiff-Appellant,

v.

DAWN BARTRAM, Head Mail Room Screener; R.
NAVEJA, Mail Room Screener; D. LUKOWSKI,
Mail Room Screener; RICHARD JUHLKE, Mail
Room Supervisor (Lieutenant); KELLY ROSE,
Inst. Inspector, in their individual and official
capacities,

Defendants-Appellees.

ORDER

Before: SUHRHEINRICH, GILMAN, and LARSEN, Circuit Judges.

Maurice Moore, a pro se Ohio prisoner, appeals a district court order denying his motion to reopen a civil action that the court had dismissed for failure to state a claim upon which relief may be granted. 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).

Moore is an inmate at Richland (Ohio) Correctional Institution. In June 2017, Moore filed a lawsuit pursuant to 42 U.S.C. § 1983 against the following Richland Correctional Institution employees in their individual and official capacities: Dawn Bartram, head mail room screener; R. Naveja, mail room screener; D. Lukowski, mail room screener; Richard Juhlke, mail room supervisor; and Kelly Rose, inspector. According to Moore's complaint, the defendants mishandled his legal mail in March 2016, thus resulting in his missing a filing deadline in a probate matter in which he had an interest. Moore alleged that, because he missed the filing deadline, the Ohio Court of Appeals dismissed his appeal as untimely, which caused him to lose

an inheritance. He thereafter filed grievances against certain prison officials concerning the mishandling of his legal mail. Moore alleged that despite grieving his claims, the defendants continued to mishandle his legal mail, including mail involving a foreclosure matter. Moore alleged that the defendants' interference with his legal mail was in retaliation for his having grieved his claims. Finally, he alleged that Inspector Rose prevented him from appealing one of his grievances to the chief inspector. Asserting that these various actions constituted violations of his First, Fifth, Sixth, and Fourteenth Amendment rights, Moore sought nominal, compensatory, and punitive damages, as well as a declaratory judgment, injunctive relief, legal costs, and attorney's fees.

The district court screened Moore's complaint pursuant to 28 U.S.C. § 1915A and dismissed the complaint after concluding that it failed to state a claim upon which relief may be granted. Specifically, the district court determined that a prisoner's constitutional right of access to the courts does not apply to probate-court matters. The district court further determined that even if Moore had pleaded an actionable access-to-the-courts claim, his conclusory assertions were insufficient to demonstrate that he had suffered an actual injury. Finally, the district court determined that Moore's retaliation claim was without merit because of its vague and conclusory nature. In dismissing Moore's complaint, the district court also certified pursuant to 28 U.S.C. § 1915(a)(3) that an appeal could not be taken in good faith. After Moore failed to pay the appellate filing fee, we dismissed his appeal for want of prosecution.

In September 2019, Moore filed a motion to reopen his case in the district court. He asserted that, because the district court had dismissed his complaint and advised that a prisoner's right of access to the courts does not apply to probate matters, he filed his § 1983 claims in the Ohio Court of Claims. He explained that the Court of Claims dismissed the action for lack of subject-matter jurisdiction and that therefore his claims must be heard in federal court after all; he sought a chance to "cure the deficiencies" described by the district court when it dismissed his complaint almost two years earlier. The district court denied Moore's motion "for lack of jurisdiction or *res judicata*." Moore appealed.

In his appellate brief, Moore asks this court to “re-open his case pursuant to [Federal Rule of Civil Procedure] 60(b)(6) for good cause and allow him to proceed with a motion . . . to amend his complaint to cure the deficiencies described by the . . . district court when his first complaint was dismissed.” Moore reiterates his claim that the defendants’ interference in his legal mail deprived him of his First Amendment rights to access the courts and to be free from retaliation, and that his allegations in the complaint stated a plausible claim under § 1983. He further argues that the opening and reading of his mail by the defendants outside of his presence violated his rights under the First Amendment.

As an initial matter, the district court summarily denied Moore’s motion to reopen for lack of jurisdiction or as barred by *res judicata*. But *res judicata* does not bar Rule 60(b) motions. *See Johnson v. Hudson*, 421 F. App’x 568, 572 (6th Cir. 2011). And by the time Moore filed his motion, his appeal in this court was no longer pending. Although the district court did not analyze whether Moore’s arguments in his motion warranted relief under Rule 60(b), review of the motion confirms that no such relief was warranted. *See Campbell v. BNSF Ry. Co.*, 600 F.3d 667, 677 (6th Cir. 2010) (explaining that this court can affirm the judgment of a district court on any grounds supported by the record even if different from the reasoning of the district court).

We review a district court’s denial of a Rule 60(b) motion for an abuse of discretion. *Thompson v. Bell*, 580 F.3d 423, 442 (6th Cir. 2009). Rule 60(b) permits a district court to grant relief from judgment 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 . . . , 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). The fact that an Ohio state court rejected Moore’s § 1983 access-to-the-courts claim for lack of jurisdiction does not establish entitlement to relief under any of the Rule 60(b) subsections and does not alter the district court’s basis for dismissing Moore’s complaint:

The “constitutional right of access to the courts extends ‘to direct appeals, habeas corpus applications, and civil rights claims only.’” *Lewis v. Randle*, 66 F. App’x 560, 561 (6th Cir. 2003) (quoting *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir. 1999) (en banc) (per curiam)). Moore did not show that any action of the defendants interfered with his access to the courts as it related to a habeas corpus proceeding, his direct criminal appeal, or a civil rights matter. Nor did the Ohio state court ruling entitle Moore to relief from the district court’s determination that Moore’s vague and conclusory allegations failed to state a claim of retaliation. The district court did not abuse its discretion when it denied Moore’s motion to reopen. To the extent that Moore attempts in his appellate brief to reargue the merits of his underlying claims, his arguments are beyond the scope of the limited issue in this appeal, which concerns only the district court’s denial of his Rule 60(b) motion.

~~Accordingly, we AFFIRM the district court’s judgment.~~

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

A district court is expressly required to dismiss any civil action filed by a prisoner seeking relief from a governmental officer or entity, as soon as possible after docketing, if the court concludes that the complaint fails to state a claim upon which relief may be granted, or if the plaintiff seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.

§1915A; *Siller v. Dean*, No. 99-5323, 2000 WL 145167, at *2 (6th Cir. Feb. 1, 2000)

A prisoner's constitutional right of access to the courts is not unlimited in scope. *Knop v. Johnson*, 977 F.2d 996 (6th Cir. 1992). The right extends "to direct [criminal] appeals, habeas corpus applications, and civil rights claims only." *Thaddeus-X v. Blatter*, 175 F.3d 378, 391 (6th Cir.1999) (en banc) (quoting *Lewis v. Casey*, 518 U.S. 343, 355 (1996)). The right does not apply to probate court matters. *Lewis v. Randle*, 66 Fed.Appx 560 (6th Cir May 23, 2003). Further, even had Plaintiff set forth an otherwise actionable access to the courts claim, actual injury is a constitutional prerequisite to such a claim. *Lewis v. Casey*, *supra*. Plaintiff does not provide any allegations indicating the factual and legal bases for his frustrated probate court claim.

Moreover, Plaintiff's assertion that he suffered retaliation for filing a successful grievance is vague and conclusory, and thus without merit. *See Lillard v. Shelby Cnty. Bd. of Educ.*, 76 F.3d 716, 726 (6th Cir.1996)(in the context of First Amendment retaliation, "conclusory allegations of unconstitutional conduct without specific factual allegations fail to state a claim under section 1983." (quotation omitted)).

Accordingly, this action is dismissed under section 1915A. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Court
Chief Judge

Dated: 11/2/17

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

MAURICE MOORE,

Plaintiff,

v.

DAWN BARTRAM, et al.,

Defendants.

CASE NO. 1:17 CV 1334

JUDGE PATRICIA A. GAUGHAN

JUDGMENT ENTRY

This Court, having contemporaneously filed its Memorandum of Opinion in this case, hereby ORDERS that this action is dismissed. Further, the Court certifies, pursuant to 28 U.S.C. §1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Court
Chief Judge

Dated: 11/2/17

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Maurice Moore,)	CASE NO. 1:17 CV 1334
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
Vs.)	
)	
Dawn Bertram, et al.,)	<u>Order</u>
)	
Defendant.)	

This matter is before the Court upon plaintiff's Motion to Reopen Civil Action (Doc. 9). The motion is DENIED for lack of jurisdiction or *res judicata*. This Court entered a Memorandum of Opinion and Order on November 2, 2017, dismissing plaintiff's Complaint. Although plaintiff filed an appeal to the United States Court of Appeals for the Sixth Circuit from the Opinion and Judgment Entry, the appeal was subsequently dismissed for want of prosecution. Accordingly, plaintiff cannot re-open his case.

IT IS SO ORDERED.

Dated: 10/1/19

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Court
Chief Judge