20-2466-cv
Pastor v. Partnership for Children's Rights

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of May, two thousand twenty-one.

PRESENT: RAYMOND J. LOHIER, JR.,
RICHARD J. SULLIVAN,
JOSEPH F. BIANCO,
Circuit Judges.

ELIZABETH PASTOR,

Plaintiff-Appellant,

v. No. 20-2466-cv

PARTNERSHIP FOR CHILDREN'S RIGHTS,

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT:	Elizabeth Pastor, *pro se*, Brooklyn, NY
FOR DEFENDANT-APPELLEE:	Michael A. Frankel, Jackson Lewis P.C., White Plains, NY

Appeal from an order of the United States District Court for the Eastern District of New York (Carol Bagley Amon, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order of the District Court is AFFIRMED.

Elizabeth Pastor, proceeding pro se, appeals from the July 7, 2020 order of the United States District Court for the Eastern District of New York (Amon, J.), which denied Pastor's October 7, 2019 motion for relief pursuant to Federal Rule of Civil Procedure 60(b)(6). In 2010 Pastor sued her former employer, Defendant-Appellee Partnership for Children's Rights (the "Partnership"), alleging that the Partnership discriminated and retaliated against her in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. The District Court granted summary judgment to the Partnership because it had fewer than fifteen employees and therefore did not constitute an "employer" for purposes of

either statute. In October 2012 Pastor appealed the District Court's judgment to this Court, and we affirmed. See 538 F. App'x 119 (2d Cir. 2013).

Over six years later, Pastor moved to vacate the 2012 judgment under Federal Rule of Civil Procedure 60(b)(1)–(3). The District Court denied the motion as untimely, and Pastor did not appeal. In October 2019 Pastor filed a second motion to vacate the judgment, this time under Rule 60(b)(6). The District Court denied Pastor's motion, concluding that it "merely repeat[ed] the same claims and arguments [Pastor] previously raised," D. Ct. Dkt. 62 at 2, and Pastor filed this appeal. We assume the parties' familiarity with the underlying facts and prior record of proceedings, to which we refer only as necessary to explain our decision to affirm.

"We review [a] district court's Rule 60 decision for abuse of discretion." United Airlines, Inc. v. Brien, 588 F.3d 158, 175 (2d Cir. 2009). A district court abuses its discretion when it "bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or renders a decision that cannot be located within the range of permissible decisions." Yukos Cap. S.A.R.L. v. Feldman, 977 F.3d 216, 234 (2d Cir. 2020) (quotation marks omitted).

The District Court did not abuse its discretion in denying Pastor's Rule 60(b)(6) motion.[1] Rule 60(b)(6) is "a catch-all provision that is properly invoked only when there are extraordinary circumstances justifying relief, when the judgment may work an extreme and undue hardship, and when the asserted grounds for relief are not recognized in clauses (1)–(5) of the Rule." Metzler Inv. GmbH v. Chipotle Mexican Grill, Inc., 970 F.3d 133, 143 (2d Cir. 2020) (quotation marks omitted). Further, a Rule 60(b) motion is properly denied where it seeks only to relitigate issues already decided. See Zerman v. Jacobs, 751 F.2d 82, 84–85 (2d Cir. 1984).

Here, the District Court correctly determined that Pastor's motion "merely recycle[d] arguments already made" and did not present grounds for relief from the judgment under Rule 60(b)(6). D. Ct. Dkt. 62 at 3. Pastor failed to identify any "extraordinary circumstances justifying relief" or any "extreme and undue

[1] To the extent Pastor challenges the District Court's 2012 grant of summary judgment, which we previously affirmed, we reject the challenge because, among other reasons, "[t]he appeal from the denial of a motion to vacate pursuant to Rule 60(b) brings up for review only the validity of that denial, not the merits of the underlying judgment itself." In re Terrorist Attacks on Sept. 11, 2001, 741 F.3d 353, 357 (2d Cir. 2013) (quotation marks omitted).

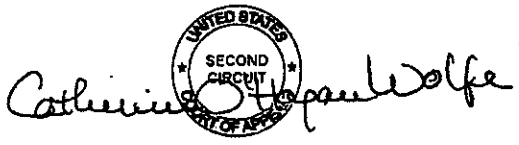
hardship" caused by the judgment itself, as opposed to a hardship caused by the alleged discrimination and retaliation. Metzler Inv. GmbH, 970 F.3d at 143 (quotation marks omitted). Further, to the extent Pastor relied on new evidence or the Partnership's purported "fraud" and misconduct, such grounds for relief are cognizable only under Rule 60(b)(2) and 60(b)(3). See id. And a motion under those subsections must be made "no more than a year after the entry of the judgment." Fed. R. Civ. P. 60(c)(1).

Moreover, Pastor's motion was untimely even under the more lenient deadline for Rule 60(b)(6), which requires that such motion be "made within a reasonable time." Fed. R. Civ. P. 60(c)(1). "In a typical case, five years from the judgment to a Rule 60(b) motion would be considered too long." Grace v. Bank Leumi Tr. Co. of N.Y., 443 F.3d 180, 191 (2d Cir. 2006). Here, Pastor's Rule 60(b)(6) motion was filed seven years after entry of the District Court's judgment, and there was no justification for this delay. Pastor suggests that her Rule 60(b)(6) motion nevertheless could have been granted based on an affidavit from Alvin Linton that, Pastor claims, constituted "new evidence." However, the affidavit is not new evidence because it was previously submitted to and

considered by the District Court in 2011. Accordingly, Pastor's motion was not filed within a reasonable time.

We have considered Pastor's remaining arguments and conclude they are without merit. For the foregoing reasons, we **AFFIRM** the order of the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of May, two thousand twenty-one,

Before:

RAYMOND J. LOHIER, JR.,
RICHARD J. SULLIVAN,
JOSEPH F. BIANCO,
Circuit Judges.

Elizabeth Pastor,

Plaintiff - Appellant,

v.

Partnership for Children's Rights,

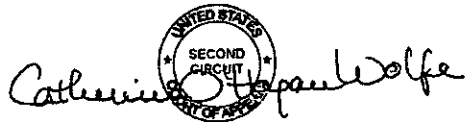
Defendant - Appellee.

ORDER
Docket No. 20-2466

Appellant having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: May 03, 2021
Docket #: 20-2466cv
Short Title: Pastor v. Partnership for Children's Rig

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 10-cv-5167
DC Court: EDNY (BROOKLYN)
DC Judge: Amon
DC Judge: Bloom

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:
* be filed within 14 days after the entry of judgment;
* be verified;
* be served on all adversaries;
* not include charges for postage, delivery, service, overtime and the filers edits;
* identify the number of copies which comprise the printer's unit;
* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
* state only the number of necessary copies inserted in enclosed form;
* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
* be filed via CM/ECF or if counsel is exempted with the original and two copies.

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

Date: May 03, 2021
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CLERK OF COURT

DC Docket #: 10-cv-5167
DC Court: EDNY (BROOKLYN)
DC Judge: Amon
DC Judge: Bloom

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

_____

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

_____

and in favor of

_____

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____ ____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

_____
Signature

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of May, two thousand twenty-one,

Before:

RAYMOND J. LOHIER, JR.,
RICHARD J. SULLIVAN,
JOSEPH F. BIANCO,
Circuit Judges.

Elizabeth Pastor,

Plaintiff - Appellant,

v.

Partnership for Children's Rights,

Defendant - Appellee.

ORDER
Docket No. 20-2466

Appellant having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

ELIZABETH PASTOR,

Plaintiff,

-against-

PARTNERSHIP FOR CHILDREN'S RIGHTS,

Defendant.
----------x

NOT FOR PUBLICATION
MEMORANDUM & ORDER
10-CV-05167 (CBA) (LB)

AMON, United States District Judge:

Elizabeth Pastor filed a pro se complaint against Partnership for Children's Rights ("Partnership") on November 3, 2010 alleging violations of Title VII, 42 U.S.C. § 2000e, et seq. and the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq. (ECF Docket Entry ("D.E.") # 1.) On September 27, 2012, the Court granted summary judgment in favor of Partnership, holding that it was not an "employer" within the meaning of those statutes. (D.E. # 47 at 7.) Pastor filed a motion for reconsideration one week later, attaching additional evidence of Partnership's "employer" status. (D.E. # 49 ("Motion for Reconsideration").) On January 4, 2013, the Court denied that motion for reconsideration. (D.E. # 51.) On November 5, 2013, the Second Circuit affirmed "for the reasons stated in the District Court's memorandum and order." Pastor v. P'ship for Children's Rights, 538 F. App'x 119, 119–20 (2d Cir. 2013).

On February 13, 2019, Pastor filed a motion to vacate the September 27, 2012 judgment, asserting "mistake, fraud by [the] opposing side[,] and a key piece of evidence not added to this case." (D.E. # 57 ("First Motion to Vacate").) On September 6, 2019, the Court denied Pastor's motion to vacate on the grounds that her motion was time barred under Federal Rule of Civil Procedure 60(b)(1)–(3). (D.E. # 60.) The Court also held that Pastor's motion could not be considered under Rule 60(b)(6), to which the one-year limitations period does not apply, because

"Pastor's motion fits squarely in Rules 60(b)(1)–(3)." (Id.)

On October 7, 2019, Pastor filed a second motion to vacate, explicitly seeking relief under Rule 60(b)(6). (D.E. # 61 ("Second Motion to Vacate").) Pastor's second motion to vacate argues that she is entitled to relief from the judgment "based on other reasons that justifies [sic] relief." (Id. at 2.) Because the "reasons" she presents are the same arguments she previously raised in support of her employment discrimination claims and in her prior motions, Pastor's most recent motion is DENIED.

Rule 60(b)(6) permits a litigant to seek relief from a final judgment for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). The standard for granting a motion for reconsideration is strict. Reconsideration will generally be denied unless the moving party can point to either controlling decisions or factual matters that the court overlooked, and which, had they been considered, might have reasonably altered the result reached by the court. See Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). "A Rule 60(b) motion is properly denied where it seeks only to relitigate issues already decided." Maldonado v. Local 803 I.B. of Tr. Health & Welfare Fund, 490 F. App'x 405, 406 (2d Cir. 2013) (summary order) (citing Zerman v. Jacobs, 751 F.2d 82, 85 (2d Cir. 1984)).

Pastor's newest motion merely repeats the same claims and arguments she previously raised in her complaint and in her earlier motions for reconsideration and to vacate. For example, Pastor asserts in her most recent motion that "[d]uring [her] absence on Short Term Disability . . ., [t]he Manager . . . never responded to [her] calls when [she] left messages regarding FMLA." (Second Motion to Vacate at 4; see also D.E. # 15-3 ("Amended Complaint") ("When I was calling to obtain [information on FMLA or Short Term Disability], my manager never returned my calls.").) Pastor also argues that "limited discovery was ruled by Judge Bloom when full discovery should have been conducted." (Second Motion to Vacate at 5; see also Motion for

Reconsideration at 1 ("Due to limited discovery, there were no real or proper discoveries of Defendants full payroll to determine who was compensated.").) Pastor attempts to argue in the instant motion that "[t]he facts are crystal clear when you read the affidavit attached by the employee himself who conducted payroll and handled all [Partnership's] bookkeeping needs." (Second Motion to Vacate at 5; see also First Motion to Vacate ("The EEOC and the Human Rights Division failed to notice and take into consideration the signed affidavit from the accountant that prepared the payroll." (emphasis in original)).) Because it merely recycles arguments already made, Pastor's motion does not present proper grounds for reconsideration pursuant to Rule 60(b)(6).

Accordingly, Pastor's second motion to vacate [D.E. # 61] is DENIED.

SO ORDERED.

Dated: July 6, 2020
Brooklyn, New York

/s/ Carol Bagley Amon
Carol Bagley Amon
United States District Judge

Additional material from this filing is available in the Clerk's Office.