

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JUL 21 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LOUIS HOLGER EKLUND,  
  
Plaintiff-Appellant,  
  
and  
  
JOHN WESLEY; et al.,  
  
Plaintiffs,  
  
v.  
  
STATE OF ALASKA, INC.; et al.,  
  
Defendants-Appellees.

No. 20-35966

D.C. No. 3:18-cv-00079-RRB  
District of Alaska,  
Anchorage

ORDER

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

On December 3, 2020, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and response to the court's December 3, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

No further filings will be entertained in this closed case.

**DISMISSED.**

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No. 20-35966

D.C. No. 3:18-cv-00079-RRB

District of Alaska,

Anchorage

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

A review of the record reflects that the district court's judgment was entered on April 10, 2018. Appellant filed a motion for relief from judgment on September 14, 2020. The district court denied the motion for relief from judgment on October 9, 2020. Because the notice of appeal filed on November 4, 2020 was not filed within 30 days after the judgment entered on April 10, 2020, this appeal is limited in scope to a review of the district court's October 9, 2020 post-judgment order. *See United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional); *see also* Fed. R. App. P. 4(a)(4); Fed. R. Civ. P. 59(e) (tolling motion must be filed within 28 days from entry of

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judgment); *Fiester v. Turner*, 783 F.2d 1474 (9th Cir. 1986) (untimely motion does not suspend time to appeal).

A review of the record reflects that this appeal of the district court's October 9, 2020 post-judgment order may be frivolous. This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), OR
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

If the court dismisses the appeal as frivolous, this appeal may be counted as a strike under 28 U.S.C. § 1915(g).

The briefing schedule for this appeal is stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward. Appellant

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may use the enclosed forms for any motion to dismiss this appeal or statement that the appeal should go forward.

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Attachment #1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

LOUIS HOLGER, *et al.*,

Plaintiffs,

v.

SHARON L. GLEASON, *et al.*,

Defendants.

Case No. 3:18-cv-00079-RRB

ORDER

On September 11, 2020, Louis Holger, a self-represented prisoner, filed a "Motion for Relief from a Final Judgment Pursuant to Fed. R. Civ. P. Rule 60(b)(4)(6), with Supporting Affidavit."<sup>1</sup>

Mr. Holger moves this Court under Federal Rules of Civil Procedure 60(b)(4) and (6). In his motion, Mr. Holger alleges that the judgment of the above captioned case is void, because "[t]he judgment, & all other writs & process, issued by the court, does not contain the seal of the court, nor the signature of the clerk. The judgment is bogus. It is void. The judgment is a counterfeit judgment."<sup>2</sup> In support of this argument, Mr. Holger relies on 28 U.S.C. § 1691, which states: "[a]ll writs and process issuing from a court of the United States shall be under the seal of the court and signed by the clerk thereof," in addition to quoting case law regarding

<sup>1</sup> Docket 6.

<sup>2</sup> *Id.* at 4.

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seals, writs, process, and the Constitution primarily from the 1800's.<sup>3</sup> Further, Mr. Holger argues that the judgment in this case violates his right to a jury under the Seventh Amendment of the Constitution.<sup>4</sup> Lastly, Mr. Holger includes an affidavit reiterating his belief that his legal action "exposes state sponsored child human trafficking."<sup>5</sup> The Court takes judicial notice of Mr. Holger's many civil lawsuits in this Court regarding his theories of sex trafficking, as well as his current criminal case.<sup>6</sup>

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> Docket 5-6.

<sup>5</sup> Docket 6-1 at 1.

<sup>6</sup> See *Holger v. Lew*, Case No. 3:15-cv-00046-TMB; *Native Village of Kotzebue, et al. v. Walker, et al.*, Case No. 3:17-cv-00265-SLG; *We the People of the United States, et al. v. United States of America*, Case No. 3:18-cv-00010-SLG; *The People of the United States, et al. v. United States of America, et al.*, Case No. 3:18-cv-00014-SLG; *Holger, et al. v. State of Alaska, et al.*, Case No. 3:18-cv-00040-SLG; *Native Village of Kotzebue, et al. v. City of Kotzebue, Inc, et al.*, Case No. 3:18-cv-00045-SLG; *Native Village of Kotzebue, et al. v. City of Kotzebue, Inc, et al.*, Case No. 3:18-cv-00059-SLG; *John-Wesley, et al. v. Gleason, et al.*, Case No. 3:18-cv-00079-TMB; *Holger v. Nightswonger*, Case No. 3:18-cv-00161-SLG; *Holger v. United States of America, Inc.*, Case No. 3:18-cv-000241-RRB; *Holger, et al. v. Burgess, et al.*, Case No. 3:18-cv-00277-RRB; *Holger v. Phillips, et al.*, Case No. 3:18-cv-00284-SLG; *Holger v. Burgess, et al.*, Case No. 3:18-cv-00287-RRB; *Holger v. City of Kotzebue, Inc. et al.*, Case No. 3:19-cv-00004-RRB; *Williams v. City of Kotzebue, Inc., et al.*, Case No. 3:19-cv-00147-RRB; *Holger v. Colbath, et al.*, Case No. 2:19-cv-00004-RRB; *United States v. Eklund*, Case No. 3:18-cv-00035-SLG-MMS. Judicial notice is the "court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact; the court's power to accept such a fact." BLACK'S LAW DICTIONARY, (11th ed. 2019); see also *Headwaters Inc. v. U.S. Forest Service*, 399 F.3d 1047, 1051 n.3 (9th Cir. 2005) ("Materials from a proceeding in another tribunal are appropriate for judicial notice.") (internal quotation marks and citation omitted); see also Fed. R. Evid. 201.

3:18-cv-00079-RRB, *Holger, et al. v. Gleason, et al.*

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Federal Rule of Civil Procedure 60(b)(4) provides that a court may relieve a party from a final judgment, order, or proceeding when the judgment is void. Rule 60(b)(4) allows a court to nullify a judgment "so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final."<sup>7</sup> "Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard."<sup>8</sup> "But the scope of what constitutes a void judgment is narrowly circumscribed."<sup>9</sup>

Mr. Holger argues that the judgment in this case is void because it does not comply with 28 U.S.C. § 1691. But, Section 1691 does not apply to all court orders—only writs and process orders.<sup>10</sup> Writs and process orders command either action or inaction from a person.<sup>11</sup> Further, 28 U.S.C. § 1691 does not apply

<sup>7</sup> *United Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010).

<sup>8</sup> *Id.* at 271.

<sup>9</sup> *Hoffmann v. Pulido*, 928 F.3d 1147, 1151 (9th Cir. 2019).

<sup>10</sup> *Formanack v. Stillwater Towing, Inc.*, 2018 WL 10152503 (D. Minn. Feb. 2, 2018) (because the court had not issued orders compelling a person to comply with a demand of the court, its orders were not required to comply with 28 U.S.C. § 1691).

<sup>11</sup> *United States v. Mariner*, 2012 WL 6082720 (D. N.D. Dec. 4, 2012) (stating "In essence, both 'writ' and 'process' command or direct action or inaction on the part of an individual . . . 28 U.S.C. § 1691 refers to an order or directive by a court which compels a person to comply with a court's demand.").

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to judgments.<sup>12</sup> Rule 58 of the Federal Rules of Civil Procedure governs the issuance of judgments and does not mandate a seal.<sup>13</sup> The Court takes judicial notice that Mr. Holger has attempted to utilize this argument regarding 28 U.S.C. § 1691 in previous motion and filings, including in his ongoing criminal matter, and previously has been instructed as to the inapplicability of § 1691.<sup>14</sup> Accordingly, this argument is not well taken.

To the extent Mr. Holger argues that his right to a jury trial has been violated, the Court finds no merit to this argument. The Court issued an Order on April 9, 2018, dismissing this case on the basis of *res judicata* and for being duplicative and frivolous litigation.<sup>15</sup> Moreover, in the Order the Court issued a warning regarding Mr. Holger's numerous harassing lawsuits filed in bad faith.<sup>16</sup> Mr. Holger did not appeal this order to the Ninth Circuit Court of Appeals. As stated by the

<sup>12</sup> *United States v. Dawes*, 161 F. App'x 742, 745 (10th Cir. 2005) (holding "Section 1691, however, applies only to writs and process that issue from the district court, not orders and judgments.").

<sup>13</sup> See Fed. R. Civ. P. 58.

<sup>14</sup> *Supra* note 5; *United States v. Eklund*, Case No. 3:18-cr-00035-SLG, Docket 160.

<sup>15</sup> Docket 4 at 3.

<sup>16</sup> *Id.* at 4-6. Subsequently, Mr. Holger has received three strikes under 28 U.S.C. § 1915(g). Docket 6 at 6-7, *Holger v. Burgess, et al.*, Case No. 3:18-cv-00287-RRB ("The Clerk of Court is directed to no longer accept Mr. Holger's filings without pre-screening and approval from the Court or prepayment of the filing fee.").

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United States Supreme Court, "a motion under Rule 60(b)(4) is not a substitute for a timely appeal."<sup>17</sup>

Rule 60(b)(6) also may relieve a party from a final judgment, order, or proceeding for "any other reason that justifies relief."<sup>18</sup> Mr. Holger attacks the judgment in this case solely on the basis on 28 U.S.C. § 1691 and that a judgment without a seal impedes his right to a jury trial.<sup>19</sup> Both of these arguments have been addressed above. Mr. Holger has not presented a reason that justifies relief. Therefore, the Court cannot grant relief under Rule 60(b)(6) of the Federal Rules of Civil Procedure.

In conclusion, Mr. Holger has not provided this Court with appropriate grounds relief from judgment under either Rule 60(b)(4) or 60(b)(6) of the Federal Civil Rules of Procedure. Therefore, the Motion for Relief from a Final Judgment at Docket 6 is **DENIED**.

**IT IS SO ORDERED.**

DATED at Anchorage, Alaska this 9th day of October, 2020.

/s/ Ralph R. Beistline  
Senior United States District Judge

<sup>17</sup> *United Aid Funds, Inc.*, 559 U.S. at 271.

<sup>18</sup> Fed. R. Civ. P. 60(b)(6).

<sup>19</sup> See Docket 6.