

United States Court of Appeals
for the Fifth Circuit

No. 21-60434

United States Court of Appeals
Fifth Circuit

FILED

December 9, 2021

Lyle W. Cayce
Clerk

MARIO DERRELL JONES,

Plaintiff—Appellant,

versus

GREAT SOUTHERN NATIONAL BANK; RAYMOND JAIL; JACKSON
POLICE DEPARTMENT; CASSANDRA KAUERZ; STEPHEN
HATCHETT, DISTRICT ATTORNEY; LIEUTENANT BOBBY QUEEN;
OFFICER FRED SULLIVAN; KENNETH WILSON; BRETT TROTTER;
FRANKLIN CHANCEY; EILEEN PARRISH; BRYAN HOSS; JUDGE
CARROLL ROSS; JUDGE AMY REEDY; DOCTOR JAMES SEGO;
ALVIN PASCHAL; DISTRICT ATTORNEY GENERAL STEVE BEBB;
10TH JUDICIAL DRUG TASK FORCE; BRADLEY COUNTY
DISTRICT ATTORNEY GENERAL'S OFFICE; BRADLEY COUNTY
SHERIFF'S OFFICE; PAMELA HANCOCK; WILLIAM HAMMACK,

Defendants—Appellees.

Appeal from the United States District Court of the
Southern District of Mississippi
Civil Action No. 3:20-cv-77

Before KING, COSTA, and HO, *Circuit Judges.*

Appendix A

No. 21-60434

PER CURIAM:*

Mario Derrell Jones failed to timely file his Notice of Appeal within thirty days of the district court's final judgment, as required under Fed. R. App. 4(a)1(A).

We therefore dismiss this appeal for lack of subject-matter jurisdiction. Even if the court had jurisdiction to hear this appeal, we would affirm the district court's dismissal because Jones' claims are time-barred.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

The judgment entered provides that appellant pay to appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk

Charles Whitney

By:

Charles B. Whitney, Deputy Clerk

Enclosure(s)

Mr. Franklin Chancey
Mr. Charles G. Copeland
Ms. Pamela L. Hancock
Mr. Bryan Hoss
Mr. Mario Derrell Jones
Mr. Matthew Floyd Jones
Ms. Amanda S. Jordan
Mr. Thomas E. Lequire
Mr. Lemuel Eggleston Montgomery III
Mr. Edricke LeMoyne Peyton
Ms. Erin Palmer Polly

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MARIO D. JONES

PLAINTIFF

v.

CIVIL ACTION NO. 3:20-CV-77-KHJ-LGI

GREAT SOUTHERN NATIONAL BANK;
RAYMOND JAIL; JACKSON POLICE DEPARTMENT;
CASSANDRA KAUERZ; STEPHEN HATCHETT, DA;
LT. BOBBY QUEEN; FRED SULLIVAN; KENNETH
WILSON; BRETT TROTTER; FRANKLIN CHANCEY;
EILEEN PARRISH; BRYAN HOSS; JUDGE CARROLL
ROSS; JUDGE AMY REEDY; DR. JAMES SEGO;
ALVIN PASCHAL; STEVE BEBB; 10TH JUDICIAL
DRUG TASK FORCE; BRADLEY COUNTY
DISTRICT ATTORNEY GENERAL'S OFFICE;
BRADLEY COUNTY SHERIFF'S OFFICE; PAMELA
HANCOCK; WILLIAM HAMMACK

DEFENDANTS

ORDER

This action is before the Court on Plaintiff Mario D. Jones' Motion to Alter or Amend Judgment [55]. Jones asks the Court to reconsider its Order [52] granting Defendants' Motions to Dismiss [6]; [7]; [8]; [10]; [12]; [21]; [34]; [42], and finding as moot a Motion for More Definite Statement [14] "under Fed. R. Civ. P. 59(e) based on clear error of procedures, error of facts, error of the law, and with newly discovered evidence." [56] at 1. For these reasons, the Court denies Jones' Motion.

I. Standard for Motion to Reconsider

The Court may evaluate "a motion asking the court to reconsider a prior ruling" under either Rule 59(e) or Rule 60(b). *Demahy v. Schwarz Pharma, Inc.*, 702

F.3d 177, 182 n.2 (5th Cir. 2012). “The rule under which the motion is considered is based on when the motion is filed. If [it] is filed within twenty-eight days after the entry of judgment, the motion is treated as though it was filed under Rule 59, and if it was filed outside of that time, it is analyzed under Rule 60.” *Id.* Jones filed his Motion [155] twenty-eight days after the Court’s Order [52], so Rule 59 applies.

“A Rule 59(e) motion calls into question the correctness of a judgment.”

Templet v. Hydrochem, Inc., 367 F.3d 473, 478 (5th Cir. 2004). There are only three possible grounds for altering a judgment under Rule 59(e): “(1) an intervening change in controlling law, (2) the availability of new evidence not previously available, or (3) the need to correct a clear error of law or prevent manifest injustice.” *Williamson Pounders Architects, P.C. v. Tunica Cnty*, 681 F. Supp. 2d 766, 767 (N.D. Miss. 2008).

Critically, Rule 59(e) motions are “not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment,” *Templet*, 367 F.3d at 478, and they “should not be used to . . . re-urge matters” that a party has “already advanced.” *Nationalist Movement v. Town of Jena*, 321 F. App’x 359, 364 (5th Cir. 2009). Rule 59(e) serves the “narrow purpose” of permitting a party to “correct manifest errors of law or fact” or “present newly discovered evidence.” *Templet*, 367 F.3d at 478. Reconsideration is “an extraordinary remedy that should be used sparingly.” *Nationalist Movement*, 321 F. App’x at 364. Before filing a Rule 59(e) motion, parties are cautioned to “evaluate whether what may seem to be a clear error of law is in fact simply a point of

disagreement" with the Court. *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D. Miss. 1990).

II. Analysis

Jones presents three grounds for relief in support of his Motion: (1) the Court erred by failing to schedule a "hearing on factors important to the outcome of his life"; (2) Jones has "new facts of newly discovered evidence that were detrimental to his case and current life situation"; and (3) the Court's Order [52] was based on certain errors of law and fact. [56] at 2-6. The Court will consider each in turn.

First, Jones says the Court erred when it entered a final judgment [53] against him without first holding hearings on Jones' Motion to Set Aside and Vacate Judgments for Fraud Upon the Court Staying Discovery [49] and Motion to Unseal Documents [46].¹ In his Motion to Set Aside and Vacate Judgments for Fraud Upon the Court Staying Discovery [49], Jones—attempting to proceed under Fed. R. Civ. P. 60—requested "a judgment ruling that said Defendants individually . . . [and] collectively perpetrated fraud on the Federal Court," an "order for full discovery," and for the Court to "set aside judgments entered in the Estate & Trust case" in state court in 2007. His Motion to Unseal Documents asked the Court to enter an Order "mak[ing] public all documents and exhibits filed by the United States in conjunction with all documents and exhibits submitted under seal by the United

¹ Jones filed a second Motion to Set Aside and Vacate Judgments for Fraud Upon the Court Staying Discovery [54], this time ex parte, after this Court entered a Final Judgment. Like the first, his second Motion requests that this Court "void judgments based on Federal Rules of Civil Procedure 60(b)(4) connected to the Plaintiff's Estate and Trust case," arguing the state court's judgment is "legally invalid at the moment." [54] at 2. The Court denies this motion too.

States on any and all Criminal [sic] matters related to the Plaintiff, Mario Jones, and the Franklin Wilson Estate/Trust."

The Court finds both Motions [49]; [46] are meritless, and the consideration of either Motion would not have changed the disposition of the case. This Court does not have jurisdiction to set aside a 2007 state court judgment or to unseal documents that another court has placed under seal. The Court properly found it was not necessary to hold a hearing on either Motion prior to granting Defendants' Motions to Dismiss and entering final judgment against Jones.

Second, Jones contends he has "newly discovered evidence that were [sic] detrimental to his case and current life situation[.]" [56] at 3. But Jones has not shown any of the evidence attached as exhibits to his Motion [55] was previously unavailable. For example, Jones attaches a letter from the State of Tennessee Department of Correction dated September 25, 2020, and states, "this letter is newly discovered evidence confirming this matter has been sealed by the Court due to the corruption that occurred by public officials[.]" *Id.* However, Jones was already aware these court records were under seal, as his previously-filed Motion to Unseal Documents [46] shows. He also attaches letters dated May 7, 2015; July 31, 2018; and July 8, 2015—all of which predate this action entirely—along with other exhibits that this Court has previously considered, such as the Trust Agreement, which Jones attached before as Exhibit C to his Responses in Opposition to Motion to Dismiss. *See* [29-4]; [31-4]. None of this evidence is "newly discovered" and, therefore, cannot serve as a basis for reconsideration under Rule 59(e).

Finally, Jones claims the Court committed “errors of law” when it determined the statute of limitations barred his § 1983 action. Although the Court finds it difficult to follow Jones’ argument that “there is enough evidence that shows the Plaintiff was never notified of the hearing perpetrated with fraud violating his due process[;] there is no statute of limitations under Fraud Upon the Court Rule,” the law remains clear that Jones’ claims are barred under the statute of limitations applicable to § 1983 actions. When a plaintiff brings a section 1983 action, federal courts apply the “statute of limitations governing personal injuries in the forum state.” *Owens v. Okure*, 488 U.S. 235, 249-50 (1989). For the reasons stated in the Court’s Order [52], Jones’ claims for unlawful taking of property, violation of federal banking laws, wrongful conviction, kidnapping, and false imprisonment are time-barred.²

Because Jones cannot show a need to “correct manifest errors of law or fact” or “present newly discovered evidence,” *Templet*, 367 F.3d at 478, his Rule 59(e) Motion to Alter or Amend Judgment is denied.

III. Conclusion

The Court has considered all the arguments set forth by the parties. Those arguments not addressed would not have changed the outcome of the Court’s

² Jones also contends this Court committed a factual error when it stated the only apparent link between the Mississippi events and the Tennessee events giving rise to his action was that they happened within a few years of each other. [56] at 6. Jones alleges Mississippi Defendant Cassandra Kauerz “paid off public officials in Tennessee to commit these criminal acts by falsifying court documents to issue an illegal warrant for Plaintiff’s arrest[.]” *Id.* But even if Jones could show a concerted criminal effort among all Defendants to “steal [his] inheritance and to keep him illegally incarcerated” as he suggests, this does not change the Court’s finding that the statute of limitations for Jones’ claims has expired.

decision. For these reasons, the Court DENIES Jones' Motion to Alter or Amend Judgment [55].

SO ORDERED AND ADJUDGED this the 1st day of April, 2021.

s/ Kristi H. Johnson
UNITED STATES DISTRICT JUDGE