

Csse No. _____

IN THE
UNITED STATES SUPREME COURT

DAVID KENDALE LAMB,

Petitioner,

v.

SUSAN WILSON, et al

Defendant,

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI


Joint Appendix

Mr. David Kendale Ibn Lamb #188625
Pro per,
Muskegon Comm Fac
2400 S. Sheridan Dr.
Muskegon, MI 49442

8-8-2022

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DAVID K. LAMB #188625,

Plaintiff,

v.

SUSAN WILSON, et al.,

Defendants.

Case No. 2:14-CV-218

HON. GORDON J. QUIST

ORDER

Plaintiff, David K. Lamb, filed this action in 2014. He alleged violations of the Eighth Amendment. On March 7, 2016, this Court dismissed Lamb's claims against Defendants Wilson, Shullick, and Corizon Health. (ECF No. 70.) On May 12, 2017, this Court entered Judgment in favor of all Defendants. (ECF No. 182.) The Sixth Circuit affirmed. (ECF No. 190.) On January 15, 2021, United States Magistrate Judge Maarten Vermaat rejected Lamb's Petition for Rule 60(b)(6) because the case was closed. (ECF No. 192.) Lamb has now filed a Motion for Rehearing for the Statutory Interpretation of Relief from Judgment Pursuant to Rule 60(b) and Rule 15(c)(2). (ECF No. 194.) He argues that the magistrate judge should not have rejected his filing. He further asks this Court to vacate the judgment and allow him to amend his complaint.

Rule 60(b) of the Federal Rules of Civil Procedure provides:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding 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 (whether previously called intrinsic or extrinsic), 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).

“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 or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1). The party seeking relief under Rule 60(b) bears the burden of establishing the grounds for such relief by clear and convincing evidence. *See McCurry ex rel. Turner v. Adventist Health System/Sunbelt, Inc.*, 298 F.3d 586, 592 (6th Cir. 2002).

If a motion falls within the scope one of the circumstances or grounds for relief provided in Rule 60(b)(1)-(5), the Court is foreclosed from awarding relief for “any other reason” pursuant to Rule 60(b)(6). *See Blue Diamond Coal Co. v. Trs. Of UMWA Combined Benefit Fund*, 249 F.3d 519, 524 (6th Cir. 2001); *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990). Here, Lamb attempts to proceed under Rule 60(b)(6), but his arguments clearly fall under two other subsections of the Rule. First, he argues that there is newly discovered evidence, which is covered by Rule 60(b)(2). Second, he argues that Defendants committed fraud upon the court, which is covered by Rule 60(b)(3). As Lamb acknowledges in his motion, he did not file the motion within one year of the Court entering the Judgment. Lamb explains that his motion is untimely because he had surgery the week before the March 7, 2017, deadline and was not discharged from the hospital until April 7, 2017. The time to file his motion, however, began to run after the Court

entered the final Judgment on May 12, 2017. Thus, Lamb had until May 12, 2018, to file his motion. Lamb did not file his motion until January 15, 2021—nearly four years after the Court entered the final Judgment.

Even if Lamb could proceed under Rule 60(b)(6), he has not shown that he filed the motion within a “reasonable time” as required by Rule 60(c)(1). The Sixth Circuit has explained that the reasonable time inquiry depends on the factual circumstances and the “moving party must articulate a reasonable basis for delay.” *Tyler v. Anderson*, 749 F.3d 499, 510 (6th Cir. 2014). In the instant case, Lamb’s only reason for the delay is his 2017 surgery. While Lamb has health problems, he was still capable of litigating another case in the Court during the relevant time period. *See Lamb v. Corizon*, 2:18-cv-61 (W.D. Mich.). The record establishes that Lamb did not file his motion within a reasonable time. Furthermore, Lamb has not identified any exceptional circumstances that would warrant granting relief under Rule 60(b)(6). *See Olle*, 910 F.2d at 365.

Accordingly, IT IS HEREBY ORDERED that Lamb’s motion (ECF No. 194) is **denied**.

Dated: August 5, 2021

/s/ Gordon J. Quist

GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

Lamb v. Wilson, 2022 U . S . App. LEXIS 15122

Copy Citation

United States Court of Appeals for the Sixth Circuit

June 1, **2022**, Filed

No. 21-2891

Reporter

2022 U . S . App. LEXIS 15122 *

DAVID LAMB, Plaintiff-Appellant, v. SUSAN WILSON, NURSE PRACTITIONER, ET AL., Defendants-Appellees.

Prior History: Lamb v. Wilson, **2022 U.S. App.** LEXIS 11215 (6th Cir. Mich., Apr. 25, **2022**)

Core Terms

petition for rehearing, en banc

Counsel: [*1] DAVID LAMB, Plaintiff - Appellant, Pro se, Muskegon, MI.


For SUSAN WILSON, Nurse Practitioner, MATTHEW SHULLICK, Nurse Practitioner, CORIZON HEALTH, INC., Health Care Provider, Defendant - Appellees: Ronald W. Chapman Sr. ▼, Chapman Law Group, Troy, MI.

For MELISSA LAPLAUNT, Health Unit Manager, Defendant - Appellee: Michael Richard Dean, Assistant Attorney General, Office of the Attorney General, Lansing, MI.

Judges: BEFORE: NORRIS ▼, McKEAGUE ▼, and STRANCH ▼, Circuit Judges.

Opinion

ORDER

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.  No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

Footnotes



Judges Griffin, White, and Larsen recused themselves from participation in this ruling.

Content Type: Cases

Terms: 2022 u.s. app. 15122

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No. 21-2891

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Apr 25, 2022

DEBORAH S. HUNT, Clerk

DAVID LAMB,

Plaintiff-Appellant,

v.

SUSAN WILSON, Nurse Practitioner, et al.,

Defendants-Appellees.

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) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE WESTERN DISTRICT OF
) MICHIGAN
)
)
)

ORDER

Before: NORRIS, McKEAGUE, and STRANCH, Circuit Judges.

David Lamb, a pro se Michigan prisoner, appeals the district court's order denying his motion for relief from judgment in his civil rights action brought pursuant to 42 U.S.C. § 1983. 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). Lamb also moves for the reinstatement of his case in the district court.

Lamb brought this action against Nurse Practitioners Susan Wilson and Matthew Shullick, Health Unit Manager Melissa LaPlaunt, and Corizon Health, Inc., alleging that Lamb suffered from severe spinal nerve pain, and defendants' alleged failure to treat him resulted in a myriad of symptoms including immobility, numbness, incontinence, and weight loss. He claimed that the defendants were deliberately indifferent to his serious medical needs under the Eighth Amendment. The district court granted summary judgment in favor of the defendants. We affirmed, determining that Wilson's and Shullick's medical care did not sink to the level of

deliberate indifference in violation of the Eighth Amendment, that Lamb did not present evidence of any custom or policy of Corizon that caused him injury, and that LaPlaunt was not personally involved in Lamb's care. *Lamb v. Wilson*, No. 17-1670 (6th Cir. Jan. 16, 2018) (order).

In January 2021, Lamb filed a Rule 60(b) motion, an amended complaint, and numerous exhibits, all of which a magistrate judge rejected because the case was closed. He then filed a motion for reconsideration, arguing that the court should not have rejected his Rule 60(b) motion. Lamb argued that Nurse Practitioners Wilson and Shullick were not licensed physicians with doctorate degrees and thus should not have been allowed to medically treat him. He recounted subsequent diagnoses and examinations in 2016 and 2017 by spinal cord specialists that resulted in a determination that Lamb required surgery. Lamb also claimed that Wilson's and Shullick's attorneys committed fraud upon the court. The district court denied the motion for reconsideration, determining that Lamb's Rule 60(b) motion was not timely.

On appeal, Lamb argues that Wilson and Shullick treated him without doctorate degrees and without proper supervision in contravention of Michigan law, which deprived them of standing to argue that they were not deliberately indifferent to his serious medical needs. Lamb next argues that we lack jurisdiction over his appeal because the district court wrongly denied his Rule 60(b) motion and declined to consider his amended complaint and new evidence. Lastly, he argues that Wilson's and Shullick's attorneys committed fraud upon the court by defending their clients despite knowing that they lacked standing to do so and by failing to explain to the court that nurse practitioners are not licensed physicians qualified to treat spinal injuries.

We review a district court's decision to deny relief under Rule 60(b) for an abuse of discretion. *Yeschick v. Mineta*, 675 F.3d 622, 628 (6th Cir. 2012). A court abuses its discretion when it applies an incorrect legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact. *United States v. Pugh*, 405 F.3d 390, 397 (6th Cir. 2005). When a party appeals the denial of a Rule 60(b) motion, we do not review the underlying judgment, but instead determine whether one of the circumstances specified by Rule 60(b) for reopening a judgment exists. *See Johnson v. Dellatifa*, 357 F.3d 539, 543 (6th Cir. 2004). Lamb brought his motion under Rule 60(b)(6), but he claimed newly discovered evidence and fraud, which would

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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DAVID LAMB,

Plaintiff-Appellant,

v.

SUSAN WILSON, Nurse Practitioner, et al.,

Defendants-Appellees.

Before: NORRIS, McKEAGUE, and STRANCH, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Western District of Michigan at Marquette.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk