

Case No. 23-5927

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ORDER

MALCOLMX JOHNSON

Plaintiff - Appellant

v.

WISE STAFFING GROUP

Defendant - Appellee

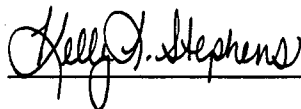
Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by June 13, 2024.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

**ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT**
Kelly L. Stephens, Clerk

Issued: June 28, 2024



United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 06/28/2024.

Case Name: MalcolmX Johnson v. Wise Staffing Group

Case Number: 23-5927

Docket Text:

ORDER filed to dismiss for want of prosecution for appellant's failure to pay fee by June 13, 2024. No mandate to issue.

The following document(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Mr. MalcolmX Johnson
247 William Roberts Road
Apartment 504
Columbus, MS 39702

A copy of this notice will be issued to:

Ms. Wendy R. Oliver

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

MALCOLMX JOHNSON,

Plaintiff,

v.

WISE STAFFING GROUP,

Defendant.

No. 1:22-cv-1073-STA-jay

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
ORDER DENYING PLAINTIFF'S MOTION TO REOPEN (ECF NO. 24)
ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH
ORDER ON APPELLATE FILING FEE**

Before the Court is Plaintiff MalcolmX Johnson's Motion to Reopen (ECF No. 24), and the United States Magistrate Judge's report and recommendation (ECF No. 26) that the Court deny Plaintiff's Motion. By way of background, the Court originally dismissed Plaintiff's case on the recommendation of the Magistrate Judge on September 27, 2022, and entered judgment. *See* Order Adopting Rep. & Recommendation, Sept. 27, 2022 (ECF No. 15). Plaintiff did not appeal the Court's decision, and the time to file an appeal has long since passed. The judgment in this case is therefore final.

Then, on January 30, 2023, more than four months after the Court had dismissed the case, Plaintiff filed a motion to reopen the case (ECF No. 18), and on February 8, 2023, a motion to subpoena (ECF No. 20) a right-to-sue letter from the EEOC. Plaintiff also moved to add another party as a Defendant. On March 21, 2023, the Magistrate Judge issued a report and recommendation (ECF No. 21) that the Court deny Plaintiff's motions, reasoning that Plaintiff had not shown an entitlement to relief under Federal Rule of Civil Procedure 60(b) and that his request

to add a party to his now closed civil action was therefore moot. When Plaintiff filed no objections to the Magistrate Judge's recommendation, the Court adopted the report and recommendation on April 6, 2023, and denied Plaintiff's requests for relief.

In his latest Motion to Reopen, Plaintiff now indicates that he has received a right-to-sue letter from the EEOC and wants to proceed with his claims. According to the right-to-sue letter attached to the Motion (ECF No. 24-1), the EEOC issued Plaintiff the letter on August 1, 2023. The Magistrate Judge has once more issued a report and recommendation (ECF No. 26) that the Court deny the request to reopen the case. The Magistrate Judge noted that Plaintiff's case has now been closed almost a year. However, Plaintiff has not shown why he is entitled to any relief from the judgment under Federal Rule of Civil Procedure 60(b). Just as he did in his prior report, the Magistrate Judge also noted that the Court dismissed Plaintiff's original claims without prejudice, thereby allowing Plaintiff to refile his claims as a new lawsuit once he received a right-to-sue letter from the EEOC. Without some showing to satisfy the requirements of Rule 60(b), the Magistrate Judge recommends that the Court deny Plaintiff's request to reopen this closed case.

Plaintiff had 14 days from the service of the Magistrate Judge's report in which to file objections. Plaintiff has filed a timely, one-page objection (ECF No. 27) to the report and its recommended conclusions of law. Plaintiff argues that the EEOC's slow processing his charge of discrimination has occasioned the delay in getting his case reopened. Plaintiff also seeks permission to add Pilgrim Pride as a defendant in this case.

Congress enacted 28 U.S.C. § 636 to relieve the burden on the federal judiciary by permitting the assignment of district court duties to magistrate judges. *See United States v. Curtis*, 237 F.3d 598, 602 (6th Cir. 2001) (citing *Gomez v. United States*, 490 U.S. 858, 869-70 (1989)); *see also Baker v. Peterson*, 67 F. App'x 308, 310 (6th Cir. 2003). The United States

District Court for the Western District of Tennessee adopted Administrative Order 2013-05 for this very purpose, referring all cases filed by non-prisoner plaintiffs acting *pro se* to a United States Magistrate Judge for management of all pretrial matters. The Magistrate Judge has recommended that the Court deny Plaintiff's Motion to Reopen pursuant to 28 U.S.C. § 636(b)(1)(B). While "a district judge must determine de novo any part of a Magistrate Judge's disposition that has been properly objected to," Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C), the district court is not required to review (under a de novo or any other standard) "any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 150 (1985). The district court should adopt the findings and rulings of the Magistrate Judge to which no specific objection is filed. *Id.* at 151.

The Court finds that Plaintiff's objections are not actually objections to the Magistrate Judge's recommendation so much as they are requests to add a new party to the case and an explanation for the delay in getting a right-to-sue letter from the EEOC. Before the Court can consider those issues, though, Plaintiff must first show cause for the Court to set aside the judgment in what is a closed civil case. Federal Rule of Civil Procedure 60(b) lists several grounds to grant a party relief from a final judgment. "Relief under Rule 60(b) is 'circumscribed by public policy favoring finality of judgments and termination of litigation.'" *Doe v. Lexington-Fayette Urban Cty. Gov't*, 407 F.3d 755, 760 (6th Cir. 2005) (quoting *Waiferson Ltd. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992)). "[T]he party seeking relief under Rule 60(b) bears the burden of establishing the grounds for such relief by clear and convincing evidence." *Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 454 (6th Cir. 2008).

Plaintiff has not carried this heavy burden. Plaintiff has not given any reasons why the Court should grant his request to reopen this case or why Plaintiff cannot refile his claims in a new lawsuit now that he has received a right-to-sue letter from the EEOC. The right-to-sue letter

attached to Plaintiff's Motion to Reopen (ECF No. 24-1) was dated August 1, 2023. Plaintiff has 90 days from the receipt of his right-to-sue to file a new action. *Boshaw v. Midland Brewing Co.*, 32 F.4th 598, 603 (6th Cir. 2022) (citing 42 U.S.C. § 2000e-5(f)(1)). Because Plaintiff has not carried his burden under Rule 60(b), the Court hereby **ADOPTS** the Magistrate Judge's report and recommendation and **DENIES** Plaintiff's Motion to Reopen.

The next issue to be addressed is whether the Court should authorize Plaintiff to appeal this decision *in forma pauperis*. Under 28 U.S.C. § 1915(a)(3), an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. "'Good faith' has been defined as a requirement that an appeal present a nonfrivolous question for review." *Cruz v. Hauck*, 404 U.S. 59, 62 (1971) (Douglas, J., concurring). The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The same considerations that lead the Court to deny Plaintiff relief from a final judgment, namely, Plaintiff's failure to meet any of the requirements for setting aside the judgment under Rule 60(b), also compel the conclusion that an appeal would not be taken in good faith. It is therefore **CERTIFIED**, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal in this matter by Plaintiff would not be taken in good faith and Plaintiff may not proceed on appeal *in forma pauperis*.

The United States Court of Appeals for the Sixth Circuit's decisions in *McGore v. Wigglesworth*, 114 F.3d 601, 612–13 (6th Cir. 1997) and *Floyd v. United States Postal Serv.*, 105 F.3d 274, 276 (6th Cir. 1997) apply to any appeal filed by Plaintiff in this case. If Plaintiff files a notice of appeal, he must pay the entire \$505 filing fee required by 28 U.S.C. §§ 1913 and 1917. By filing a notice of appeal Plaintiff becomes liable for the full amount of the filing fee, regardless of the subsequent progress of the appeal. The entire filing fee must be paid within thirty (30) days of the filing of the notice of appeal. If Plaintiff fails to comply with the above assessment of the

appellate filing fee within thirty (30) days⁴ of the filing of the notice of appeal or the entry of this order, whichever occurred later, the Court will notify the Sixth Circuit, which will dismiss the appeal. If the appeal is dismissed, it will not be reinstated once the fee is paid. *McGore*, 114 F.3d at 610.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
UNITED STATES DISTRICT JUDGE

Date: October 10, 2023.

⁴ The district court may extend this deadline one time by thirty (30) days if the motion to extend is filed before the expiration of the original deadline. *McGore*, 114 F.3d at 610.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY

SEP - 6 2022

Thomas M. Gould, Clerk
U.S. District Court
W.D. OF TN, Jackson

MALCOLMX JOHNSON

Plaintiff,

v.

No. 1:22-CV-1073-STA-jay

WISE STAFFING GROUP,

Defendant.

AMENDED COMPLAINT

I, MalcolmX Johnson, comes before The United States District Court Clerk Office, Honorable United States District Court Judge, and the United State District Court Magistrate Judge for Job Employment Discrimination. I went to Wise Staffing Group to apply for a job on Friday, March 11, 2022, for orientation at 8:30 am-5:00 pm. I got hired and started work Monday, March 14, 2022, and Tuesday, March 15, 2022. I could not report back on Wednesday, March 15, 2022, at Pilgrim Pride in Mayfield, KY. Because when I arrived back from my job, back to my home at 126 N. Jernigan Dr. Apt. 13 Union City, TN 38261. My mother, Korea Witcher Johnson, told me that a lady from Wise Staffing Group called her to tell me not to come back to work because my time was up. My mother and I went in person to ask if I can get a written statement why I was terminated. Wise Staffing Group never gave me a reason why my time was up because the assignment was for 90 days and I asked if the temp service have a contract with the company that I worked for, and I want a statement from them to also ask if the temp service has anything in the application that said they can terminate me without cause. Wise Staffing

Group employees refused to give us their names and my mother said she was taking it to the Federal Court and EEOC, and Wise Staffing Group said that they don't care who we go to. After we left Wise Staffing Group, and went home, two Union City Police Officers knocked at our door. My mother and father answered the door, one of the officers asked if Malcolm here. So, I told the officer that my son wasn't here, and my mother told the officer that my name is MalcolmX Johnson, not Malcolm. When I arrived in my car, my mother said in front of the two officers, "there goes my son he just pulling up". The officer that asked for me walked to my car asking me for my driver's license and ran a check and my driver's license was good, the officer printed out a "ban citation" because the employees lied to the two police officers that I was going to blow up something because my name is MalcolmX Johnson, my religion, my race, national origin, gender, sex, and false allegations against me.

Job Employment Discrimination Statute:

Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Mr. MalcolmX Johnson
126 N. Jernigan Dr Apt 13
Union City, TN 38261

From: Memphis District Office
200 Jefferson Ave, Suite 1400
Memphis, TN 38103

EEOC Charge No.
490-2022-02520

EEOC Representative
ANDRES SENA,
Investigator

Telephone No.
9017016437

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

More than 180 days have passed since the filing of this charge.

The EEOC is terminating its processing of this charge.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Digitally Signed By: Edmond Sims
08/01/2023

Enclosures(s)

Edmond Sims
Acting District Director

RECEIVED

AUG 22 2023

Wendy R Oliver, Clerk
U.S. District Court
W.D. OF TN, Jackson

RECEIVED
AUG 22 2023
Wendy R. Oliver, Clerk
U.S. District Court
W.D. OF TN, Jackson

**INFORMATION RELATED TO FILING SUIT
UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you receive this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10** -- not 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice **and** within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do **not** relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

RECEIVED

AUG 22 2023

MalcolmX Johnson
Plaintiff

Wendy R Oliver, Clerk
U.S. District Court
W.D. OF TN, Jackson

Vs

No: 1:22-cv-1073-STA-jay

Wise Staffing Group,
Pilgrim Pride
Defendants

Motion

I, MalcolmX Johnson, am requesting from the U. S. District Court Clerk Office, and the Honorable U. S. District Court Judge, S. Thomas Anderson, and the Magistrate Judge, John A. York to reopen my Civil Action Number: 1-22-CV-1073. (Exhibit #1.)

Motion

I, MalcolmX Johnson, am requesting from the U. S. District Court Clerk Office, and the Honorable U. S. District Court Judge, S. Thomas Anderson, and the Magistrate Judge, John A. York to attach my amendment complaint to the notice to a right to sue letter. (Exhibit #2.)

A Notice of Change of Address

I, MalcolmX Johnson, new address is: 247 William Roberts Road, Apt. 504, Columbus, MS 39702. Phone Number: 662-497-5781. (EX. #3) Please electronic file all three (Exhibit 1-3)

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

MALCOMX JOHNSON,

Plaintiff,

v.

No. 1:22-cv-1073-STA-jay

WISE STAFFING GROUP,

Defendant.

REPORT AND RECOMMENDATION

Before the Court is Plaintiff's Second Motion to Reopen this case. ECF No. 24. This matter has been referred to the undersigned for a Report and Recommendation. ECF No. 25. For the reasons that follow, the undersigned **RECOMMENDS** Plaintiff's Second Motion to Reopen be **DENIED**.

I. BACKGROUND

Plaintiff initiated this action on April 21, 2022. ECF No. 1. Plaintiff moved for and was granted leave to proceed in forma pauperis. ECF Nos. 2, 9. Plaintiff, who asserts an employment discrimination claim, was ordered to file an amended complaint that included a copy of an EEOC right-to-sue letter. ECF No. 12. Plaintiff filed an amended complaint but did not include an EEOC right-to-sue letter as he had been directed to do. ECF No. 13. The undersigned Magistrate Judge recommended that this matter be dismissed without prejudice due to Plaintiff having failed to exhaust his administrative remedies. ECF No. 14. The presiding District Judge adopted the recommendation and dismissed this matter without prejudice, and judgment was entered. ECF Nos. 15-16. Plaintiff then filed motions to reopen his case, to add a defendant, and for the Court

to subpoena his right-to-sue letter from the EEOC. ECF No. 18, 20. The undersigned Magistrate Judge recommended that Plaintiff's motions be denied. ECF No. 21. The presiding District Judge again adopted the recommendation and declined to reopen Plaintiff's case. ECF No. 22. Plaintiff now files the instant motion to reopen his case and included a right-to-sue letter issued by the EEOC. ECF No. 24.

II. ANALYSIS

Like the first time Plaintiff sought to have his case reopened, Federal Rule of Civil Procedure 60(b) governs when a court is allowed to set aside or vacate a final judgment or order. *See* FED.R.CIV.P. 60(b). Also like the first time Plaintiff sought to have his case reopened, Plaintiff has not identified any section under Rule 60(b) that is applicable to his case; instead, Plaintiff now has submitted a right-to-sue letter from the EEOC that he was directed to submit over a year ago. *See* ECF No. 12. The only provision of Rule 60(b) that could provide any relief to Plaintiff is the catch-all provision of subsection (6) which "is available 'only in exceptional or extraordinary circumstances'" and "must include unusual and extreme situations where principles of equity mandate relief." *Tanner v. Yukins*, 776 F.3d 434, 443 (6th Cir. 2015) (quoting *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990)). Again, Plaintiff has offered no reasons to establish that his late produced right-to-sue letter is an "exceptional or extraordinary circumstance," or an "unusual or extreme situation[]" where principles of equity mandate relief." *Id.* Because Plaintiff has failed to demonstrate why the court should set aside or vacate a final judgment in this matter, Plaintiff's second motion to reopen his case should be **DENIED**.

III. CONCLUSION

For the reasons stated above, Plaintiff's second Motion to Reopen this case should be **DENIED**. ECF No. 24. Plaintiff is cautioned against filing another motion to reopen this case as

he has failed to demonstrate in either of his motions to reopen that he is entitled to the relief requested. Plaintiff is reminded that this matter was dismissed without prejudice due to his failure to exhaust his administrative remedies, and, if Plaintiff believes that he has now corrected this deficiency and exhausted his administrative remedies, Plaintiff may refile this matter as a new lawsuit.

Respectfully submitted this the 31st day of August, 2023.

s/Jon A. York
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATION MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT AND RECOMMENDATION. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.