

No. 16-1465

BABUBHAI PATEL,

Plaintiff-Appellant,

v.

MCKESSON CORPORATION,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Michigan
Southern Division
Case No. 14-11299
Honorable Arthur J. Tarnow, Presiding

APPELLANT'S PETITION FOR PANEL REHEARING
AND REHEARING EN BANC

APPELLANT PRO SE

Babubhai Patel
#46049-039
Federal Correctional Institution
P.O.Box 1000
Milan, Michigan. 48160

APPENDIX-B
(7-pages)

CAUSE FOR PANEL REHEARING
AND REHEARING EN BANC

The appellate panel made a serious factual error that cause the panel to erroneously deny Patel's appeal and affirm the district court's orders.

FACTUAL ERROR MADE BY APPELLATE PANEL

In affirming the district court's orders the appellate panel stated the following reasons for its findings:

"As the district court correctly determined. "[t]he fact that the entities are inincorporated business entities is not relevant". The case involved only injuries to the Patel Pharmacies, none of the pharmacies was a party to the action, Patel was not a licensed attorney, and "corporations, partnerships, or associations" are not permitted to "appear in federal court otherwise than through a licensed attorney". (ORDER, page 3). (emphysis added).

The appellate panel made a "factual error" by finding, The case involved only injuries to Patel Pharmacies, none of the pharmacies was a party to the action.

ARGUMENT

The records of this case clearly show that Patel named both himself and Patel Pharmacies as parties in this case. On 03/28/2014, Patel filed a COMPLAINT against McKesson Corporation. (See Exhibit A, Docket Text, Entry # 1). Patel's Complaint # 1 did not name

Patel's unincorporated business entity "Patel Pharmacies" as a party to the action.

On 04/08/2014, Patel filed an Amended Copmlaint, Docket entry # 3. (See Exhibit A, Docket text, Entry # 3). Patel's Amended Complaint in the CAPTION names both BABUBHAI PATEL, and PATEL PHARMACIES, as Plaintiff's . Paragraph 4. of Patel's Amended Complaint states the following:

4. The Plaintiff Babubhai Patel is a citizen of the United States of America and currently incarcerated at the Federal Correctional Institution, P.O.Box 1000, Milan, Michigan . 48160 and is the owner operator of Patel Pharmacies at all times complained of herein. (See Exhibit B, Amended Complaint)

It is clear from the records and exhibits presented herein that both Babubhai Patel and Patel Pharmacies were named as parties to this action and that both the district court and the appellate panel committed a serious error in finding that Patel Pharmacies were not a party to this action. The erroneous finding that Patel Pharmacies was not a party to the action caused the district court to grant the Defendant McKesson Corporations motion to dismiss Patel's Complaint and caused the appellate panel to erroneously affirm the district court's orders. It is clear Patel is entitled to relief from both the district courts and the appellate court's erroneously findings that caused his Complaint and Appeal to be dismissed and denied.

CONCLUSION

Wherefore Patel showing he is entitled to have the appellate panel rehear his appeal or entitled to rehearing En Banc. Patel respectfully requests the Appellate panel to rehear his appeal, vacate the judgment affirming the district court's orders and remand this case with instructions for the district court to reinstate Patel Complain against McKesson Corporation allowing Patel's action against McKesson to proceed according to law.

Respectfully submitted

Date 7/6/2017



Babubhai Patel
Plaintiff/Appellant pro se

Certificate Of Service

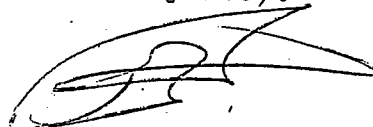
I, Babubhai Patel, swear under penalty of perjury that I have mailed a copy of Petition-Appellant's Petition For Panel Rehearing And Rehearing En Banc to Counsel for the Defendant McKesson Corporation, Matthew P. Allen, 840 W. Long Lake Road, Attorney at Law #150, Troy, Michigan. 48098, this 6th day of July, 2017. (28 U.S.C. §1746).



Babubhai Patel

Certificate Of Mailing

I, Babubhai Patel, swear under penalty of perjury that I have mailed Plaintiff-Appellants Petition For Panel Rehearing And Rehearing En Banc, to the Office Of The Clerk, United States Court of Appeals For The Sixth Circuit, 100 East Fifth Street, Room 540, U.S. Courthouse, Cincinnati, Ohio. 45202-3988, by placing said petition in a legal envelope with sufficient first-class postage attached and deposited same in the Prisoner's Mail Box at the Federal Correctional Institution, Milan Michigan this 6th day of July, 2017. (28 U.S.C. §1746).



Babubhai Patel

#46049-039

Federal Correctional Institution

P.O.Box 1000

Milan, Michigan. 48160

U.S. District Court
Eastern District of Michigan (Detroit)
CIVIL DOCKET FOR CASE #: 2:14-cv-11299-AJT-MKM

Patel v. McKesson Corporation
Assigned to: District Judge Arthur J. Tarnow
Referred to: Magistrate Judge Mona K. Majzoub
Cause: No cause code entered
Date Filed: 03/28/2014
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff
Babubhai Patel represented by Babubhai Patel
460490039
MILAN
FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
P.O. BOX 1000
MILAN, MI 48160
PRO SE

V.

Defendant
McKesson Corporation represented by Colin M. Battersby
Miller, Canfield,
150 W. Jefferson Avenue
Suite 2500
Detroit, MI 48226-4415
313-963-6420
Email: battersby@millercanfield.com
ATTORNEY TO BE NOTICED

Matthew P. Allen
Miller, Canfield, Paddock and Stone, PLC
840 West Long Lake Road
Suite 200
Troy, MI 48098-6358
(248) 267-3290
Fax: 248-879-2001
Email: allen@millercanfield.com
ATTORNEY TO BE NOTICED

Date Filed

#

Docket Text

03/28/2014 1 COMPLAINT filed by Babubhai Patel against McKesson Corporation. Receipt No: DET066086 - Fee: \$ 400.
(DWor) (Entered: 03/31/2014)

EXHIBIT A, 2-pages

04/02/2014 2 ORDER REASSIGNING CASE from District Judge Victoria A. Roberts and Magistrate Judge Paul J. Komives to District Judge Arthur J. Tarnow and Magistrate Judge Mona K. Majzoub. (SSch) (Entered: 04/02/2014)

04/08/2014 3 AMENDED COMPLAINT filed by Babubhai Patel against McKesson Corporation. (KKra) (Entered: 04/09/2014)

05/22/2014 4 ORDER to Show Cause: Show Cause Response due by 6/2/2014. Signed by District Judge Victoria A. Roberts. (LVer) (Entered: 05/22/2014)

05/28/2014 5 CERTIFICATE of Service/Summons Returned Executed. McKesson Corporation served on 4/28/2014, answer due 5/19/2014. (DPer) (Entered: 05/29/2014)

06/05/2014 6 REQUEST FOR CLERK'S ENTRY OF DEFAULT as to McKesson Corporation by Babubhai Patel. (KKra) (Entered: 06/05/2014)

06/05/2014 7 CLERK'S ENTRY OF DEFAULT as to *McKesson Corporation* (KKra) (Entered: 06/05/2014)

06/25/2014 8 MOTION for order directing defendant McKesson Corporation to file a reply to plaintiff's complaint by Babubhai Patel. (DPer) (Entered: 06/25/2014)

06/30/2014 9 RESPONSE TO ORDER TO SHOW CAUSE by Babubhai Patel. (KKra) (Entered: 07/01/2014)

07/02/2014 10 ORDER REFERRING MOTION to Magistrate Judge Mona K. Majzoub: 8 MOTION filed by Babubhai Patel. Signed by District Judge Arthur J. Tarnow. (MLan) (Entered: 07/02/2014)

07/02/2014 TEXT-ONLY CERTIFICATE OF SERVICE re 10 Order Referring Motion to Magistrate Judge on Babubhai Patel Pris. No. 46049-039 at P.O. Box 1000, Milan, MI 48160. (MLan) (Entered: 07/02/2014)

07/02/2014 TEXT-ONLY CERTIFICATE OF SERVICE re Certificate of Service on McKesson Corporation at One Post Street, San Francisco, CA 94104. (MLan) (Entered: 07/02/2014)

07/08/2014 11 NOTICE of Appearance by Matthew P. Allen on behalf of McKesson Corporation. (Allen, Matthew) (Entered: 07/08/2014)

07/08/2014 12 NOTICE of Appearance by Colin M. Battersby on behalf of McKesson Corporation. (Battersby, Colin) (Entered: 07/08/2014)

07/09/2014 13 MOTION to Set Aside 7 Clerks Entry of Default by All Defendants. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A - 2012 FBI press release, # 3 Exhibit B - Declaration of Kimbir Tate, # 4 Exhibit C - Declaration of Alexis Saul-Klein) (Battersby, Colin) (Entered: 07/09/2014)

07/09/2014 14 RESPONSE to 8 MOTION for Order Directing McKesson Corporation to File a Reply to Plaintiffs' Complaint filed by All Defendants. (Attachments: # 1 Index of Exhibits, # 2 Exhibit A - 2012 FBI press release, # 3 Exhibit B - Westlaw: NAACP v. Thomas Atkins) (Battersby, Colin) (Entered: 07/09/2014)

07/10/2014 15 Notice of Determination of Motion Without Oral Argument re 8 MOTION (LBar) (Entered: 07/10/2014)

07/10/2014 TEXT-ONLY CERTIFICATE OF SERVICE re 15 Notice on Babubhai Patel Pris. No. 460490039 at P.O. Box 1000, Milan, MI 48160. (LBar) (Entered: 07/10/2014)

08/20/2014 16 MOTION for Court to Direct Defendant McKesson Corporation to Serve Plaintiff with a Copy of Defendant's Pleadings by Babubhai Patel. (KKra) (Entered: 08/20/2014)

08/20/2014 17 CERTIFICATE OF SERVICE re 16 MOTION for Court to Direct Defendant McKesson Corporation to Serve Plaintiff with a Copy of Defendant's Pleadings by McKesson Corporation (Battersby, Colin) (Entered: 08/20/2014)

08/20/2014 18 RESPONSE to 16 MOTION for Court to Direct Defendant McKesson Corporation to Serve Plaintiff with a Copy of Defendant's Pleadings filed by McKesson Corporation. (Battersby, Colin) (Entered: 08/20/2014)

09/04/2014 20 RESPONSE to 13 MOTION to Set Aside 7 Clerks Entry of Default filed by Babubhai Patel. (KKra) (Entered: 09/05/2014)

09/04/2014 21 REPLY to Response re 16 MOTION for Court to Direct Defendant McKesson Corporation to Serve Plaintiff with a Copy of Defendant's Pleadings filed by Babubhai Patel. (KKra) (Entered: 09/05/2014)

09/05/2014 19 ORDER REFERRING MOTIONS to Magistrate Judge Mona K. Majzoub: 16 MOTION for Court to Direct Defendant McKesson Corporation to Serve Plaintiff with a Copy of Defendant's Pleadings filed by Babubhai Patel and 13 MOTION to Set Aside 7 Clerks Entry of Default filed by McKesson Corporation. Signed by District Judge Arthur J. Tarnow. (MLan) (Entered: 09/05/2014)

09/05/2014 22 Notice of Determination of Motion Without Oral Argument re 16 MOTION for Court to Direct Defendant McKesson Corporation to Serve Plaintiff with a Copy of Defendant's Pleadings and 13 MOTION to Set Aside 7 Clerks Entry of Default (LBar) (Entered: 09/05/2014)

09/09/2014 23 REPORT AND RECOMMENDATION re 6 Request for Clerks Entry of Default, 8 MOTION, 16 MOTION for Court to Direct Defendant McKesson Corporation to Serve Plaintiff with a Copy of Defendant's Pleadings, 13 MOTION to Set Aside 7 Clerks Entry of Default - Signed by Magistrate Judge Mona K. Majzoub. (LBar) (Entered: 09/09/2014)

09/16/2014 24 NOTICE of Change of Address/Contact Information by Babubhai Patel. (KKra) (Entered: 09/17/2014)

11/05/2014 (25) ORDER Adopting 23 REPORT AND RECOMMENDATION, denying 8 Motion for Order directing defendant to file a reply; denying denying 16 Motion for Court to Direct Defendant McKesson Corporation to Serve Plaintiff with a Copy of Defendant's Pleadings, granting (13) MOTION to Set Aside Default and Vacating 4 Order to Show Cause. Signed by District Judge Arthur J. Tarnow. (MLan) (Entered: 11/05/2014)

11/05/2014 TEXT-ONLY CERTIFICATE OF SERVICE re 25 Order on Report and Recommendation on Babubhai Patel Pris. No. 460490-039 at 11352 Moraine Drive, Unit B, Palos Hills, IL 60465. (MLan) (Entered: 11/05/2014)

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 16-1465

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 29, 2017
DEBORAH S. HUNT, Clerk

BABUBHAI PATEL,

Plaintiff-Appellant,

v.

MCKESSON CORPORATION,

Defendant-Appellee.

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

ORDER

Before: GRIFFIN and DONALD, Circuit Judges; HOOD, District Judge.*

Babubhai Patel appeals from the district court's orders entered on December 28, 2015 and March 30, 2016, that denied Patel's motion for relief from judgment filed under Federal Rule of Civil Procedure 60(b) and his motion to alter or amend filed under Rule 59(e). 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).

Patel was convicted of participating in a health care fraud conspiracy in violation of 18 U.S.C. § 1349, participating in a drug conspiracy in violation of 21 U.S.C. § 846, aiding and abetting health care fraud in violation of 18 U.S.C. §§ 1347 and 2, and aiding and abetting the unlawful distribution of controlled substances in violation of 21 U.S.C. § 841(a)(1) and 18

*The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

APPENDIX-C
(4-pages)

U.S.C. § 2. The district court sentenced him to 204 months of imprisonment to be followed by three years of supervised release. This court affirmed Patel's conviction and sentence, *United States v. Patel*, 579 F. App'x 449, 466 (6th Cir. 2014), finding that Patel, the "leader of these conspiracies," used a network of pharmacies he owned to defraud Medicare, Medicaid, and private insurers of approximately \$18.9 million. *Id.* at 451-52. This court has also affirmed the denial of Patel's post-judgment motions (No. 16-1014).

While Patel's direct criminal appeal was pending, he sued a wholesale drug distributor, McKesson Corporation ("McKesson"), claiming that McKesson fraudulently inflated the prices it charged the pharmacies Patel used in the conspiracy. On January 15, 2015, the district court dismissed Patel's complaint with prejudice because he lacked standing to sue. Patel did not timely appeal the district court's judgment, nor did he file a timely post-judgment motion to toll the appeal period.

Three months after the final judgment, Patel moved the district court for relief from judgment under Federal Rule of Civil Procedure 60(b)(1), arguing that the court made a mistake of law by dismissing the suit with prejudice rather than without; that the district court made a mistake of fact by misstating the corporate form of his criminal enterprise and by misstating that the United States had seized Patel Pharmacies' assets; and that the district court judge made another mistake of law by not recusing himself after having presided over Patel's criminal case.

The district court denied Patel's Rule 60(b) motion in part and granted it in part on December 28, 2015. The district court rejected the two asserted mistakes of law as untimely. Further, the court held that while it had made a mistake of fact in finding that the United States had seized the Patel Pharmacies' assets, the mistake was immaterial to the dismissal. The district court amended its order to reflect that the dismissal was without prejudice for the sole remaining Patel pharmacy.

Thereafter, Patel filed a motion under Rule 59(e) to alter or amend the district court's December 28, 2015 order, asserting again that the district court's factual error regarding the seizure of pharmacy assets caused the court to erroneously find that Patel lacked standing to sue. The district court denied that motion on March 30, 2016. This court, in its order of June 27,

2016, determined that “[o]nly issues regarding the orders entered on December 28, 2015 and March 30, 2016 may be raised on appeal.” See *Patel v. McKesson Corp.*, No. 16-1465.

On appeal, Patel reasserts his claims of factual error and his contention that the district court judge should have recused. He does not reassert the mistake of law claim that the district court erred by dismissing the suit with prejudice.

We review the denial of a motion to alter or amend a judgment pursuant to 59(e) for an abuse of discretion. *Hansmann v. Fid. Invs. Inst. Servs. Co.*, 326 F.3d 760, 766 (6th Cir. 2003). Likewise, we generally review a district court’s denial of a Rule 60(b) motion for relief from judgment for abuse of discretion. *Thompson v. Bell*, 580 F.3d 423, 442 (6th Cir. 2009) (citing *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596 (6th Cir. 2006)). “Abuse of discretion is defined as a definite and firm conviction that the trial court committed a clear error of judgment.” *Id.* (quoting *Burrell v. Henderson*, 434 F.3d 826, 831 (6th Cir. 2006)).

Because Patel did not raise his recusal argument within the timeframe for taking an appeal from the final judgment, see *Cincinnati Ins. Co. v. Byers*, 151 F.3d 574, 578 (6th Cir. 1998), the district court properly concluded that it was untimely.

The district court did not commit a clear error of judgment and did not, therefore, abuse its discretion by declining to revive Patel’s complaint for an alleged mistake of fact. According to Patel, the district court misstated the corporate form of the pharmacies Patel used to commit fraud. In short, Patel argues that his pharmacies were not a corporation, as the district court stated, but rather a network of “unincorporated business entities” that have the capacity to sue or be sued. Thus, Patel contends he had standing to sue.

As the district court correctly determined, “[t]he fact that the entities are unincorporated business entities is not relevant.” The case involved only injuries to the Patel Pharmacies, none of the pharmacies was a party to the action, Patel was not a licensed attorney, and “corporations, partnerships, or associations” are not permitted to “appear in federal court otherwise than through a licensed attorney.” *Rowland v. Cal. Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 202 (1993).

In Patel's second alleged mistake of fact, he contends that he is entitled to relief because the district court erred by stating in the court's dismissal order that the United States had seized the assets of Patel Pharmacies. The district court acknowledged the error and amended its order accordingly. The mistake regarding the seizure of Patel Pharmacies' assets had no bearing on the dismissal for lack of standing.

Accordingly, the district court did not abuse its discretion, and we **AFFIRM** the district court's orders of December 28, 2015 and March 30, 2016.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk