

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13636
Non-Argument Calendar

D.C. Docket No. 1:14-cv-01623-TWT

ELISHA GILBERT, JR.,

Plaintiff-Appellant,

versus

FREDERICK L. DANIELS, JR.,
Chairman, DeKalb County,
BARBARA BABBIT KAUFMAN,
Vice Chairman, Fulton County,
HAROLD BUCKLEY, SR.,
Treasurer, DeKalb County,
JUANITA JONES ABERNATHY,
Secretary, City of Atlanta,
ROBERT L. ASHE, III,
City of Atlanta, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(February 14, 2018)

Before TJOFLAT, ROSENBAUM, and NEWSOM, Circuit Judges.

PER CURIAM:

Elisha Gilbert, Jr., filed a *pro se* lawsuit against thirty or so defendants arising out of his July 2012 arrest at the Five Points MARTA Station in Atlanta, Georgia. The defendants filed motions to dismiss on various grounds, and the district court dismissed the action in a brief order. On appeal, we found that Gilbert's complaint was a "shotgun pleading" that did not give fair notice of its claims, but we concluded that the court did not adequately explain its reasons for dismissal and that Gilbert was probably entitled to at least one chance to amend his complaint. *Gilbert v. Daniels*, 624 Fed. App'x 716 (11th Cir. 2015). Accordingly, we "vacate[d] the dismissal of Gilbert's complaint and we remand[ed] for the district court to develop the record and determine, in the first instance, whether Gilbert should be instructed to replead his claims or whether amendment would be futile." *Id.* at 718.

After the case was returned on remand, the district court, consistent with our mandate, granted the defendants' motions to dismiss on the ground that the

complaint was a shotgun pleading. The court then ordered Gilbert to file within 28 days an amended complaint that complied with the Federal Rules of Civil Procedure. That order was entered on November 1, 2016. A copy of the district court's order was mailed to Gilbert, but it was returned to the clerk because no one by his name resided at the address on file for him.

Because Gilbert did not respond within 28 days, the district court dismissed Gilbert's lawsuit on December 14, 2016. A copy of the district court's dismissal order was mailed to the address on file for Gilbert, but, again, it was returned to the clerk as undeliverable.

Over six months later, on June 10, 2017, Gilbert filed a motion for relief from the judgment under Rules 60(a) and (b)(6) of the Federal Rules of Civil Procedure.¹ In that motion, Gilbert stated that he did not receive a copy of the court's order giving him 28 days to file an amended complaint. He explained that he was arrested on September 4, 2016, about two months before the order issued, and held in custody at the DeKalb County jail until March 30, 2017. He claimed that he made the court aware of his mailing address at the jail through his filings in a separate case, but that the court failed to send him notice of the order and

¹ Just prior to filing the Rule 60 motion, he also filed a petition for a writ of mandamus with this Court. We denied Gilbert leave to proceed *in forma pauperis*, concluding that he had available the alternative remedy of moving for relief under Rule 60(b), and then dismissed the mandamus petition when Gilbert did not pay the necessary filing fee.

judgment. He asked the court to correct the error and allow him to file an amended complaint.

The district court denied Gilbert's Rule 60 motion. The court noted that "[a]t no time did the Defendant notify the Court that he was in jail or that his mailing address had changed." Finding that Gilbert's failure to receive the court's prior order, and his failure to comply with that order, was "entirely" his own fault, the court concluded that he was not entitled to relief from the judgment. Gilbert timely appealed the denial of his post-judgment motion.

On appeal, Gilbert essentially argues that the district court had constructive notice of his address change and that such notice should have been sufficient. Gilbert contends that the court mailed the order permitting him to amend his complaint to the wrong address, despite the court's alleged knowledge that his address had changed because, while he was in custody, he filed a habeas petition that included a different return address and was assigned to the same district judge.

Rule 60(b)(6) allows for relief from an order for any reason that justifies relief. Fed. R. Civ. P. 60(b)(6). An appeal of a ruling on a Rule 60(b) motion is narrow in scope, addressing only the propriety of the denial or grant of relief and not issues regarding the underlying judgment. *Am. Bankers Ins. Co. of Fla. v. Nw. Nat'l Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999).

We review the denial of a Rule 60(b) motion for an abuse of discretion. *Big Top Koolers, Inc. v. Circus-Man Snacks, Inc.*, 528 F.3d 839, 842 (11th Cir. 2008). A district court abuses its discretion when it relies on clearly erroneous facts, applies an incorrect legal standard, or commits a clear error of judgment. *See Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1096 (11th Cir. 2004). “Discretion means the district court has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law.” *Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1337 (11th Cir. 2005) (quotation marks omitted). In general, relief under Rule 60(b) is warranted only where, “absent such relief, an ‘extreme’ and ‘unexpected’ hardship will result.” *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984).

Here, the district court did not abuse its discretion in denying Gilbert’s Rule 60(b) motion. The court had dismissed Gilbert’s lawsuit for failing to comply with its November 1, 2016, order directing him to file an amended complaint within 28 days.² *See Betty K Agencies, Ltd.*, 432 F.3d at 1337 (stating that Rule 41(b), Fed. R. Civ. P., authorizes dismissal of an action *sua sponte* for failure to comply with the rules or any order of the court). While Gilbert did not know of that November

² Whether the district court abused its discretion in dismissing Gilbert’s action is not before us because an appeal from the denial of a Rule 60(b) motion generally does not bring up issues regarding the underlying judgment. *Am. Bankers Ins. Co.*, 198 F.3d at 1338. Moreover, while Federal Rule of Appellate Procedure 4(a)(6) allows district courts to reopen the time to appeal if the moving party did not receive notice of the judgment, Gilbert’s Rule 60 motion cannot be construed as a motion under Rule 4(a)(6) because it was not filed within 180 days after the judgment was entered. *See Fed. R. App. P. 4(a)(6)(B)*.

1 order until much later, the record supports the court's finding that his lack of notice was due to his failure to notify the court that he was in jail or that his mailing address had changed. Even *pro se* parties are required to comply with "the relevant law and rules of court," *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989), and Northern District of Georgia Local Rule 41.2(B) requires "a party appearing *pro se* to keep the clerk's office informed of any change in address and/or telephone number" and warns that the failure to do so may lead to dismissal or a default judgment. N.D. Ga. L.R. 41.2(B). Because Gilbert failed to update the court of his address change or his detention, and that failure led to Gilbert's lack of compliance with the order to amend his complaint, the district court's decision to deny relief under Rule 60(b) was within the range of reasonable choices. *See Betty K Agencies*, 432 F.3d at 1337.

Gilbert's claim that he adequately advised the district court of his new mailing address is unpersuasive. According to Gilbert, the court should have known of his mailing address at the jail because it was included in several filings in a separate habeas corpus case, which was assigned to the same district judge. However, Gilbert's filings in his habeas action did not provide sufficient notice of an address change in his civil-rights action. His habeas case was an entirely separate action proceeding under a separate docket number. Nothing in his habeas filings made clear that he also had a civil-rights case before the court. Nor is it

reasonable to expect the clerk or the court to attempt to cross-reference filings in separate cases for the purpose of updating a plaintiff's address, particularly where, as here, all that the two cases shared was a named party.

We note as well that Gilbert was not prevented from communicating with the court during his detention at the DeKalb County jail. Gilbert's habeas filings during his detention show that he had access to the courts, so he could have updated the court on his address. And even after his release from jail on March 30, 2017, Gilbert did not make contact with the district court until June 5, 2017, in connection with a mandamus petition that he filed with this Court, which delay could reasonably have factored into the district court's decision to deny relief.

For all of these reasons, we conclude that the district court did not abuse its discretion in denying Gilbert's post-judgment motion under Rule 60(b)(6). As for the denial of his request for relief under Rule 60(a), that, too, was not erroneous. Rule 60(a) allows a district court to "correct a clerical mistake or a mistake arising from oversight or omission" in the record. Fed. R. Civ. P. 60(a). Rule 60(a) does not apply here, however, because Gilbert sought substantive relief from the judgment. *See Weeks v. Jones*, 100 F.3d 124, 128–29 (11th Cir. 1996) (errors that affect substantial rights of the parties are beyond the scope of Rule 60(a)).

The denial of Gilbert's Rule 60 motion is **AFFIRMED**.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ELISHA GILBERT, JR.,

Plaintiff,

v.

FREDERICK L. DANIELS, JR.
Chairman, DeKalb County, et al.,

Defendants.

CIVIL ACTION FILE
NO. 1:14-CV-1623-TWT

ORDER

This is a pro se civil rights action arising out of the Plaintiff's arrest at the Five Points MARTA station. It is before the Court on the Plaintiff's Motion for Relief From Judgment [Doc. 49]. The Plaintiff claims that he did not receive a copy of the Court's Order of October 26, 2016 giving him 28 days to file an Amended Complaint consistent with the mandate of the Court of Appeals. In his motion, the Plaintiff states that he was arrested on September 4, 2016 and was in custody at the DeKalb County jail for 208 days. At no time did the Defendant notify the Court that he was in jail or that his mailing address had been changed. Therefore, the failure of the Plaintiff to comply with the Court's Order of October 26, 2016 is entirely the fault of the Plaintiff. The Plaintiff's Motion for Relief From Judgment [Doc. 49] is DENIED.

SO ORDERED, this 2 day of August, 2017.

**/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ELISHA GILBERT, JR.

Plaintiff,

v.

FREDERICK L. DANIELS, JR.
Chairman, DeKalb County, et al.

Defendants.

CIVIL ACTION FILE
NO. 1:14-CV-1623-TWT

JUDGMENT

This action having come before the court, Honorable Thomas W. Thrash, Jr., Chief United States District Judge, for consideration of the mandate of the Court of Appeals and Rules 8 and 10 of the FRCP, and the Plaintiff having failed to comply with the Court's October 26, 2016 Order, it is

Ordered and Adjudged that the action be, and the same hereby, is
DISMISSED.

Dated at Atlanta, Georgia, this 14th day of December, 2016.

JAMES N. HATTEN
CLERK OF COURT
By: s/Jennifer Lee
Jennifer Lee
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office:

December 14, 2016

James N. Hatten
Clerk of Court

By: s/Jennifer Lee
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ELISHA GILBERT, JR.,

Plaintiff,

v.

FREDERICK L. DANIELS, JR.
Chairman, DeKalb County, et al.,

Defendants.

CIVIL ACTION FILE
NO. 1:14-CV-1623-TWT

ORDER

This is a pro se civil rights action arising out of the Plaintiff's arrest at the Five Points MARTA station. It is before the Court on the Court's Order of October 26, 2016 ordering the Plaintiff to file an amended complaint within 28 days that complied with the mandate of the Court of Appeals and Rules 8 and 10 of the Federal Rules of Civil Procedure. The Plaintiff has failed to comply with that Order. Accordingly, this action is DISMISSED.

SO ORDERED, this 13 day of December, 2016.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ELISHA GILBERT, JR.,

Plaintiff,

v.

FREDERICK L. DANIELS, JR.
Chairman, DeKalb County, et al.,

Defendants.

CIVIL ACTION FILE
NO. 1:14-CV-1623-TWT

ORDER

This is a pro se civil rights action arising out of the Plaintiff's arrest at the Five Points MARTA station. The Plaintiff has named 30 Fulton County, DeKalb County, City of Atlanta and State of Georgia officials and judges. The 42 page Complaint begins with the Plaintiff's arrest on July 25, 2012 at the Five points MARTA station by a MARTA police officer and then wanders off into page after page of incomprehensibility. According to the Court of Appeals, the Complaint is a "shotgun" pleading which does not identify which Defendant is responsible for what alleged constitutional violation, and is not divided into separate paragraphs, each describing a "single set of circumstances," as required by the rules. Pursuant to the mandate of the Court of Appeals, the Plaintiff is ordered to replead his claims. Within 28 days

from the date of this Order, the Plaintiff is directed to file an Amended Complaint that complies with Rules 8(a) (“A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.”) and 10(b) (“A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances.”) of the Federal Rules of Civil Procedure. Vague and ambiguous allegations must be eliminated so that the Court can render a reasoned decision on the sufficiency of the allegations in the Complaint and provide the Court of Appeals with an opportunity to engage in meaningful appellate review. The Amended Complaint must state the Plaintiff's claims in language that is comprehensible to anyone conversant with the English language. The Defendants' Motions to Dismiss [Doc. 6, 7, 8 & 9] are GRANTED on the grounds that the Plaintiff's Complaint is a “shotgun” pleading that does not identify which Defendant is responsible for what alleged constitutional violation and is not divided into separate paragraphs, each describing a single set of circumstances as required by the rules.

SO ORDERED, this 26 day of October, 2016.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**