15. INDEX OF APPENDICES

APPENDIX A - Case 2:21-cv-00907-JTM-DMD (Doc 25) 2 pages

Petitioners attorney, submitted and Exhibit List number 2. demonstrating he planned to submit U.S. Department of Labor, Wage & Hour Division's 14-Page WHISARD Compliance Action Report at which demonstrates FMLA interference.

APPENDIX B - Case 2:23-cv-07391-BWA-KWR (Doc 38-7) 1 page

In the interconnected malpractice case termination letter, demonstrates the alleged reasons Petitioners was terminated, 1) Leave without permission and 2) misuse of T&E card. The leave without permission was really just miss-administered FMLA, and alleged card misuse was just an allegation to miss-apply FMLA waiver of standards to deny employee FMLA.

APPENDIX C - Case 2:23-cv-07391-BWA-KWR (Doc 38-8) 3 pages

In the interconnected malpractice case an Exhibit in our Motion to Reconsider our Judicial Notice, Exhibit B shows the FMLA the employers' response as to why I was not terminate in January over the card, and how employer believed it was an honest mistake and acknowledged receiving my merchant dispute in January, which also demonstrates that January had no connection to my termination in May. The exhibit also shows my refund was acknowledged from the merchant and the reason that petitioner received refund due to pre-existing damages from merchants insurance company with pre-existing damages confirmed by management.

APPENDIX D - Case 2:23-cv-07391-BWA-KWR (Doc 38-9) 3 pages

In the interconnected malpractice case an Exhibit in our Motion to Reconsider our Judicial Notice, Exhibit C shows that employer undid employees won merchant dispute on 08 April 2019. Exhibit D shows an excerpt from the original case 2:21-cv-00907-JTM-DMD

(Doc-38) Filed on page 10 demonstrating Millers' failure to rebut card misuse allegations, and since un-rebutted legal presumptions stand as a matter of law with a reasonable degree of legal certainty, the un-rebutted alleged misconduct can now were used to misapply the FMLA waiver of standards. Exhibit E, shows some arguments that could had been made by Miller on how the company card policy breaches itself and is "unenforceable", and we show the WISCARD compliant action report from DOL showing that the employer was cited with FMLA violations.

APPENDIX E - Case 2:21-cv-00907-JTM-DMD (Doc-28-2) page 103 1 pages

Shows Respondent document that was not objected to by Petitioners attorney with the best evidence tule, since the statement did not include a balance, but Petitioner annotated it to demonstrate there was no misconduct by Petitioner using his refund.

APPENDIX F - Case 2:21-cv-00907-JTM-DMD (Doc-28-7) 4 pages

Respondents Statements of Undisputed Material Facts form the original malpractice Case 2:21-cv-00907-JTM-DMD (Doc-28-7) to demonstrate where the alleged misconduct came from, Number 9. In February and March 2019, Plaintiff used his Tulane T&E Card for a series of personal purchases—including rental cars, airline tickets, fast food, and Lyft rides—totaling $840.41.

APPENDIX G - Case 2:21-cv-00907-JTM-DMD (Doc-28-2) 1 Page

Include is a copy of Petitioners deposition, cited as Number 9 citing the Plaintiff Deposition which to show petitioner argued, that he did not charge a dollar on the card and was just using his refund.

APPENDIX H - Case 2:21-cv-00907-JTM-DMD (Doc-35-4) 3 Pages

Include is a copy of the Plaintiff Response To Defendants Statements of Undisputed Material Facts form the original malpractice Case 2:21-cv-00907-JTM-DMD (Doc 35-4) to demonstrate where the alleged misconduct came from Number 9 was left undisputed by Petitioners attorney Miller. The refund purporting termination reason of misconduct, should had been rebutted by Petitioners attorney Miller.

APPENDIX I - Case 2:21-cv-00907-JTM-DMD (Doc 40) 9 Pages

Orders and Reasons case dismissed with by Eastern District prejudice on December 05, 22

APPENDIX J - Case 2:21-cv-00907-JTM-DMD (Doc 47) 4 Pages

Orders and Reasons denying petitioner motion to amend complaint pursuant to rule 60 on December 11, 23.

APPENDIX K - Case 2:21-cv-00907-JTM-DMD (Doc 50) 1 Pages

Order granting to continue in forma pauperis

APPENDIX L - Case: 24-30009 (Doc 41-1) 2 Pages

Order denying appeals to allow our motion to amend complaint pursuant to rule 60 September 9, 24.

APPENDIX M - Case: 24-30009 (Doc 41-2) 2 Pages

Instructions for Rehearing or Rehearing en Banc

APPENDIX N - Case: 24-30009 (Doc 42) 2 Pages

Judgment on September 4, 2004

APPENDIX O - Case: 24-30009 (Doc 46) 2 Pages

Order denying Rehearing *en Banc* on October 2, 2024

United States Court of Appeals for the Fifth Circuit

No. 24-30009
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 4, 2024
Lyle W. Cayce
Clerk

MANUEL TIJERINO,

Plaintiff—Appellant,

versus

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:21-CV-907

Before DAVIS, STEWART, and SOUTHWICK, *Circuit Judges*.

PER CURIAM:*

Manuel Tijerino appeals the denial of his Federal Rule of Civil Procedure 60(b) motion for relief from the summary judgment against him in his lawsuit arising under the Family Medical Leave Act (FMLA). We review for abuse of discretion. *See Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981). To the extent that he challenges the grant of summary

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

judgment on his FMLA claims, we lack jurisdiction to consider those arguments as Tijerino did not file a timely notice of appeal from the original grant of summary judgment. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007); *Williams v. Chater*, 87 F.3d 702, 705 (5th Cir. 1996).

In his Rule 60(b) motion and on appeal, Tijerino seeks relief on two grounds. First, he contends that he was entitled to relief under Rule 60(b)(1) given that counsel failed to present favorable evidence in summary judgment proceedings, failed to furnish Tijerino with a full copy of his deposition, and missed a pivotal deadline concerning summary judgment procedures. Counsel's conduct in this regard is not the type of "mistake" or "excusable neglect" envisioned by Rule 60(b)(1). *See Trevino v. City of Fort Worth*, 944 F.3d 567, 571 (5th Cir. 2019); *Pryor v. U.S. Postal Serv.*, 769 F.2d 281, 288 (5th Cir. 1985). He next argues that he was entitled to relief under Rule 60(b)(3) because the defendant fabricated a misleading narrative that deceived the district court in summary judgment proceedings. He does not, however, explain how the purportedly misleading narrative prevented him "from fully and fairly presenting his case." *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 641 (5th Cir. 2005). Accordingly, Tijerino has not demonstrated that the district court abused its discretion by denying relief under Rule 60(b). *See Seven Elves, Inc.*, 635 F.2d at 402.

The district court's judgment is AFFIRMED.

United States Court of Appeals for the Fifth Circuit

No. 24-30009
Summary Calendar

United States Court of Appeals
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FILED
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MANUEL TIJERINO,

Plaintiff—Appellant,

versus

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:21-CV-907

Before DAVIS, STEWART, and SOUTHWICK, *Circuit Judges*.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion

for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 2, 2024
Lyle W. Cayce
Clerk

No. 24-30009

MANUEL TIJERINO,

Plaintiff—Appellant,

versus

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:21-CV-907

ON PETITION FOR REHEARING EN BANC

Before DAVIS, STEWART, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MANUEL TIJERINO	**CIVIL ACTION**
VERSUS	**NO: 21-907**
ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND	**SECTION: "H"**

ORDER AND REASONS

Before the Court is Defendant's Motion for Summary Judgment (Doc. 28). For the following reasons, the Motion is **GRANTED**.

BACKGROUND

Plaintiff Manuel Tijerino began working for Defendant Administrators of the Tulane Educational Fund in August 2017 as an IT Manager. Defendant required Plaintiff to relocate from Iowa to Louisiana to begin his in-office employment. In 2018, Plaintiff's wife and children returned to Iowa to sell the couple's real estate and decided to remain there after Plaintiff's wife learned she was pregnant. In January 2019, Plaintiff requested permission from his supervisor to work remotely part time so that he could be with his wife in Iowa.

Plaintiff and his supervisor reached an agreement in which he was allowed to work remotely on certain pre-approved Thursdays and Fridays. On April 30, 2019—a month before his wife's due date—Plaintiff traveled back to Iowa and communicated to his supervisor his intent to begin working remotely full-time going forward. On May 6, 2019, Plaintiff was notified of his termination. Plaintiff alleges that Defendant failed to provide him notice of his right to Family Medical Leave Act ("FMLA") leave and terminated him in retaliation for using FMLA leave. Defendant has moved for summary judgment on these claims.

LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[1] A genuine issue of fact exists only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[2]

In determining whether the movant is entitled to summary judgment, the Court views facts in the light most favorable to the non-movant and draws all reasonable inferences in his favor.[3] "If the moving party meets the initial burden of showing that there is no genuine issue of material fact, the burden

[1] Sherman v. Hallbauer, 455 F.2d 1236, 1241 (5th Cir. 1972).
[2] Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).
[3] Coleman v. Houston Indep. Sch. Dist., 113 F.3d 528, 532 (5th Cir. 1997).

shifts to the non-moving party to produce evidence or designate specific facts showing the existence of a genuine issue for trial."[4] Summary judgment is appropriate if the non-movant "fails to make a showing sufficient to establish the existence of an element essential to that party's case."[5] "In response to a properly supported motion for summary judgment, the non-movant must identify specific evidence in the record and articulate the manner in which that evidence supports that party's claim, and such evidence must be sufficient to sustain a finding in favor of the non-movant on all issues as to which the non-movant would bear the burden of proof at trial."[6] "We do not . . . in the absence of any proof, assume that the nonmoving party could or would prove the necessary facts."[7] Additionally, "[t]he mere argued existence of a factual dispute will not defeat an otherwise properly supported motion."[8]

LAW AND ANALYSIS

A. Violation of FMLA Notice Requirements

Plaintiff alleges that Defendant violated the FMLA by failing to inform him of his rights under the FMLA when he discussed his wife's pregnancy and his need to work remotely with his supervisor on January 14, 2019. Pursuant to 29 C.F.R. § 825.300(b)(1), when an employee requests FMLA leave, or "when

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[4] Engstrom v. First Nat'l Bank of Eagle Lake, 47 F.3d 1459, 1462 (5th Cir. 1995).

[5] Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

[6] John v. Deep E. Tex. Reg. Narcotics Trafficking Task Force, 379 F.3d 293, 301 (5th Cir. 2004) (internal citations omitted).

[7] Badon v. R J R Nabisco, Inc., 224 F.3d 382, 394 (5th Cir. 2000) (quoting Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994)).

[8] Boudreaux v. Banctec, Inc., 366 F. Supp. 2d 425, 430 (E.D. La. 2005).

the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee" of his FMLA eligibility. Failure to provide notice as required may constitute "interference with, restraint, or denial of the exercise of an employee's FMLA rights."[9]

Defendant argue that this claim is time-barred. An action under the FMLA must be brought "not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought" unless the violation is willful.[10] Plaintiff alleges that Defendant failed to provide him with notice of his FMLA rights on January 14, 2019. This action was filed more than two years later on May 6, 2021. Further, Plaintiff has not made any attempt to submit evidence or argument that Defendant's failure to notify him of his FMLA rights was willful. Accordingly, this claim is time-barred.

B. FMLA Retaliation

Next, Plaintiff alleges that Defendant terminated him, in part, in retaliation for using FMLA leave. He suggests that the Court should use a "mixed motive" analysis in considering his claim because his use of FMLA leave was "a" factor, not the sole factor, in Defendant's decision to terminate him. Indeed, "[t]he mixed-motive framework applies to cases in which the employee concedes that discrimination was not the sole reason for her discharge, but argues that discrimination was a motivating factor in her termination."[11]

> Within the mixed-motive framework, (1) the employee must make a *prima facie* case of discrimination; (2) the employer must

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[9] 29 C.F.R. § 825.300; Calderone v. TARC, 640 Fed.Appx. 363, 365–66 (5th Cir. 2016).
[10] 29 U.S.C. § 2617.
[11] Richardson v. Monitronics Int'l, Inc., 434 F.3d 327, 333 (5th Cir. 2005).

> articulate a legitimate, non-discriminatory reason for the adverse employment action; and (3) the employee must offer sufficient evidence to create a genuine issue of fact either that (a) the employer's proffered reason is a pretext for discrimination, or—and herein lies the modifying distinction—(b) that the employer's reason, although true, is but one of the reasons for its conduct, another of which was discrimination. If the employee proves that discrimination was a motivating factor in the employment decision, the burden again shifts to the employer, this time to prove that it would have taken the same action despite the discriminatory animus. The employer's final burden is effectively that of proving an affirmative defense.[12]

Even assuming that Plaintiff can establish a prima facie case of retaliation, this Court agrees with Defendant that he cannot show that its legitimate, non-discriminatory reason is pretext or that it was motivated by discrimination.

i. Legitimate, Non-Discriminatory Reason

Defendant submits two legitimate, non-discriminatory reasons for Plaintiff's termination. First, Defendant submits evidence that Plaintiff misused Defendant's corporate credit card and refused to repay the amount he spent on personal charges. Defendant presents evidence that in January 2019, Plaintiff used his corporate credit card as collateral for the rental of a U-Haul for personal use. The card was mistakenly charged $919.91 for the rental. Plaintiff then reported the improper charge to J.P Morgan, who issued a refund of the amount to the card. Thereafter, U-Haul recognized its mistake and also

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[12] Richardson v. Monitronics Int'l, Inc., 434 F.3d 327, 333 (5th Cir. 2005). "As it stands, *Richardson* is the law of this circuit, which permits a mixed-motive instruction when there is evidence that both legitimate and illegitimate motives played a role in the challenged employment action." Stanton v. Jarvis Christian Coll., No. 20-40581, 2022 WL 738617, at *7 (5th Cir. Mar. 11, 2022).

issued a refund of the amount to the card. This resulted in a positive balance on the card that Plaintiff believed he was entitled to keep under federal consumer laws. Plaintiff proceeded to spend the "gift card" on personal purchases totaling $840.41.[13] However, after learning that U-Haul had corrected its error, J.P. Morgan withdrew its refund.

It is undisputed that on April 9, 2019, the Assistant Controller and Assistant Director of Defendant, Jason Catt, emailed Plaintiff about the personal charges on the card and advised him to reimburse Defendant in the amount of $840.41 by April 15, 2019. On April 24, 2019, Plaintiff's supervisor followed up with Plaintiff regarding his failure to submit the requested reimbursement. Plaintiff responded that he felt that Catt had interfered with "his chargeback"—apparently by directing J.P. Morgan to "undo it"—and that he therefore was "not paying him 1 cent."[14] Plaintiff admits that he never paid Defendant back for his personal charges. On April 25, 2019, Defendant's human resources department referred the situation to its internal audit department for a full review. On April 29, 2019, the internal audit department confirmed that Plaintiff had violated Defendant's corporate card policies, and the human resources department recommended to Plaintiff's supervisor by email that Plaintiff be terminated based on that finding. Defendant points out that the human resources department made this recommendation without any knowledge of Plaintiff's wife's pregnancy or his need for FMLA leave. His supervisor accepted this recommendation, and he was terminated on May 6, 2019.

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[13] Doc 28-2 at 50.

[14] Doc. 28-2 at 53, 105.

In addition, Defendant submits evidence that Plaintiff was also terminated for failing to report to work. On April 30, 2019, Plaintiff sent an email informing his supervisor that he was returning to Iowa that day to assist his pregnant wife and that he would be working remotely going forward. He spent all day April 30th driving from Louisiana to Iowa and did not work. Plaintiff's job was an in-office job, and although he had received permission to work remotely on some Thursdays and Fridays during his wife's pregnancy, he had not received authorization to work remotely full-time. He also did not request to take April 30th off. Accordingly, Defendant argues that Plaintiff was terminated for failing to report to work and unilaterally deciding to work remotely full-time.

ii. Pretext

Having established a legitimate non-discriminatory reason for Plaintiff's termination, the burden now shifts to Plaintiff to show by a preponderance of the evidence that the employer's articulated reason is a pretext for discrimination or that the employer's reason, although true, is but one of the reasons for its conduct, another of which was discrimination.[15] For his part, Plaintiff points to Defendant's allegedly inconsistent reasoning regarding his termination as evidence of pretext. Specifically, he argues that Defendant has given different reasons for his termination at different times, including job abandonment, failure to request leave, or violation of its work attendance policy. However, each of these reasons arise out of the same incident in which Plaintiff returned to Iowa and decided to work remotely full-time. The Court

[15] *Richardson*, 434 F.3d at 333; Lorentz v. Alcon Lab'ys, Inc., 535 F. App'x 319, 322 (5th Cir. 2013).

does not find the use of various phrases to describe Plaintiff's behavior to be inconsistent or suggestive of pretext.

Plaintiff also argues that Defendant cannot have fired him for his decision to return to Iowa and begin working remotely because he was entitled to take time off under the FMLA. However, there is no evidence that Plaintiff ever actually requested leave to assist his wife during her pregnancy.[16] Rather, he requested to work from home. The FMLA does not entitle Plaintiff to work remotely.[17]

Finally, Plaintiff suggests that his use of the corporate card was "reasonable" and that he intended to pay back the charges. In a declaration submitted in support of his opposition to this Motion, Plaintiff states that he "offered to pay back" Defendant "if U-Haul canceled the chargeback and there was a balance left on the card."[18] This declaration, however, contradicts the contemporaneous email, in which Plaintiff unequivocally stated that he did not intend to pay Defendant back. In his deposition, Plaintiff suggests that at some point after sending the email he verbally told his supervisor to take the amount out of his check. It appears that Defendant referred this request to payroll on the same day that it referred the situation to its internal audit department for full review.[19] However, Plaintiff does not explain how his last-minute about-face shows that Defendant's decision to terminate him for his misuse of the

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[16] Plaintiff testified that he discussed taking leave after the baby was born with his supervisor. Doc. 28-2 at 35. In fact, the pair had discussions about his work plans after he returned from FMLA leave. *Id.*

[17] Bennett v. Girl Scouts of Ne. Texas, No. 4:09CV443, 2010 WL 723794, at *3 (E.D. Tex. Feb. 25, 2010).

[18] Doc. 35-1 at 4.

[19] Doc. 28-2.

corporate card was pretext for discrimination. Accordingly, this Court finds that Plaintiff has not created a material issue of fact regarding whether Defendant's reasons for his termination were pretext or motivated in part by his need for FMLA leave.

CONCLUSION

For the foregoing reasons, the Motion is **GRANTED**, and Plaintiff's claims are **DISMISSED WITH PREJUDICE**.

New Orleans, Louisiana this 5th day of December, 2022.

JANE TRICHE MILAZZO
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MANUEL TIJERINO	**CIVIL ACTION**
VERSUS	**NO: 21-907**
ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND	**SECTION: "H"**

ORDER AND REASONS

Before the Court is Plaintiff's Motion for Leave to Amend Complaint (Doc. 44). For the following reasons, the Motion is **DENIED**.

BACKGROUND

On May 6, 2021, Plaintiff Manuel Tijerino brought this action under the Family Medical Leave Act ("FMLA") against his employer Defendant Administrators of the Tulane Educational Fund. On December 5, 2022, this Court granted summary judgment in Defendant's favor, holding that Plaintiff's claim for failure to notify him regarding his rights under the FMLA was time-barred and that Plaintiff could not succeed on his claim for FMLA retaliation because he had not created a material issue of fact regarding whether

Defendant's reasons for his termination were pretextual or motivated in part by his need for FMLA leave. Judgment was entered dismissing Plaintiff's claims with prejudice on December 6, 2022. Plaintiff did not timely file a Motion for Reconsideration under Rule 59 or appeal the Court's decision to the Fifth Circuit.

On October 30, 2023, Plaintiff filed *pro se* the instant motion, entitled Motion for Leave to Amend Complaint Pursuant to Rule 60. The Court will construe this Motion as one for relief from final judgment under Federal Rule of Civil Procedure 60. Defendant opposes.

LEGAL STANDARD

Federal Rule of Civil Procedure 60 provides a mechanism by which a party may seek relief from a final judgment, order, or proceeding.[1] Federal Rule of Procedure Rule 60(b) provides the grounds upon which a party may seek relief from a final judgment. These grounds include:

> (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.[2]

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[1] FED. R. CIV. P. 60.
[2] *Id.*

"Rule 60(b) relief will only be afforded in 'unique circumstances.'"[3]

LAW AND ANALYSIS

Plaintiff offers two reasons in support of reopening his case and setting aside the judgment in favor of Defendant: (1) his attorney's ineffective representation; and (2) new evidence. Specifically, Plaintiff complains that his attorney failed to present all of the relevant evidence in opposition to Defendant's Motion for Summary Judgment and mistakenly missed the deadline to file a Rule 59 motion after summary judgment was granted. Further, Plaintiff contends that he recently obtained an "unaltered" copy of his deposition that contains evidence "pivotal" to his case.

Neither of the aforementioned reasons justify relief under Rule 60(b). The Fifth Circuit makes clear that carelessness or negligence on the part of a party's counsel is not sufficient for relief under Rule 60(b).[4] "In fact, a court would abuse its discretion if it were to reopen a case under Rule 60(b)(1) when the reason asserted as justifying relief is one attributable solely to counsel's carelessness with or misapprehension of the law or the applicable rules of court."[5] "[W]ere this Court to make an exception to finality of judgment each time a hardship was visited upon the unfortunate client of a negligent or inadvertent attorney, even though the result be disproportionate to the deficiency . . . [the] meaningful finality of judgment[s] would largely disappear."[6]

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[3] Edward H. Bohlin Co. v. Banning Co., 6 F.3d 350, 357 (5th Cir. 1993).

[4] *Id.*

[5] *Id.*

[6] James v. Rice Univ., 80 F. App'x 907, 911 (5th Cir. 2003) (affirming denial of Rule 60 motion when attorney's mistakes resulted in dismissal of the plaintiff's claim for want of prosecution).

Further, Rule 60(b)(2) limits relief on the basis of new evidence to evidence that "with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." Plaintiff's deposition transcript surely does not meet this requirement. As a participant in the deposition, Plaintiff should have been aware of the evidence elicited therein, and his attorney could have with reasonable diligence obtained a transcript thereof in time to oppose Defendant's Motion for Summary Judgment.[7] Finally, Plaintiff has failed to provide "specific evidence in his motion for relief that he ha[s] a 'fair probability of success on the merits' if the judgment were set aside, and thus relief under Rule 60(b)(1) would be improper."[8]

CONCLUSION

For the foregoing reasons, the Motion is **DENIED.**

New Orleans, Louisiana this 11th day of December, 2023.

JANE TRICHE MILAZZO
UNITED STATES DISTRICT JUDGE

[7] *See* In re Bustos, No. MC 23-532, 2023 WL 5751136, at *2 (E.D. La. Sept. 6, 2023).
[8] Long v. James, 667 F. App'x 862, 863–64 (5th Cir. 2016).

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