

FILED

December 10, 2004

Charles R. Fulbruge III
Clerk

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

No. 04-20106
(Summary Calendar)

YVETTE DANIEL

Plaintiff-Appellant

v.

HOECHST MARION ROUSSEL, doing business as Aventis
Pharmaceuticals, AVENTIS PHARMACEUTICALS INC.

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:01-CV-2023

Before GARZA, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Yvette Daniel (“Daniel”) appeals the district court’s order denying her motion for relief from judgment. Daniel, however, is actually attempting to appeal once again the district court’s decision to grant summary judgment. We previously dismissed her appeal for lack of prosecution and our circuit has a “firm rule of not allowing a 60(b) motion to substitute for an appeal.” *In re Air Crash*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

at Dallas/Fort Worth Airport, 852 F.2d 842, 844 (5th Cir.1988). *See also Lancaster v. Presley*, 35 F.3d 229, 231 (5th Cir.1994). Moreover, Daniel has failed to show that the district court abused its discretion in denying her relief from judgment. *See Tollett v. City of Kemah*, 285 F.3d 357, 369 (5th Cir. 2002). Finally, we find that her motion was untimely because it was filed after the one year deadline set out in FED. R. CIV. P. 60(b). Accordingly, we DISMISS Daniel's appeal. Daniel's motion for judge appointed mediation is DENIED AS MOOT.