

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40551
Conference Calendar

BRUCE W. HOUSER,

Plaintiff-Appellant,

versus

ROBERT D. HERRERA; DENNIS K. BLEVINS; STANLEY R. MCCOY;
ELIZABETH ANN MILLER; WENDY M. WACKER; THOMAS L. HUTT;
GENE R. MARTIN; UNIDENTIFIED STATE EMPLOYEE, Whose signature is
on Inmate Grievance Form,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:00-CV-513

August 21, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:*

Bruce Wayne Houser, Texas prisoner no. 460890, seeks to appeal the dismissal of his 42 U.S.C. § 1983 action, which was tried before a magistrate judge without a jury. More than 10 days after entry of the judgment of dismissal, Houser filed a motion "to alter or amend" the judgment, which the magistrate judge denied after correctly construing it as a motion under FED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

R. Civ. P. 60(b). See Harcon Barge Co. v. D & G Boat Rentals, Inc., 784 F.2d 665, 668-69 (5th Cir. 1986) (en banc). Houser filed a notice of appeal less than 30 days after the denial of the Rule 60(b) motion, but more than 30 days after the judgment dismissing the underlying action. His notice of appeal, therefore, is effective only as to the denial of the Rule 60(b) motion; the underlying judgment is not before us. See FED. R. APP. P. 4(a)(1)(A), 4(a)(4)(A); Edwards v. City of Houston, 78 F.3d 983, 995 (5th Cir. 1996) (en banc).

Houser argues the merits of his dismissed case but makes no argument relevant to any of the grounds for relief under FED. R. Civ. P. 60(b). He therefore fails to show that the magistrate judge abused her discretion by denying his motion to alter or amend the judgment. See Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981) (appellant from denial of Rule 60(b) motion must show that denial was "so unwarranted as to constitute an abuse of discretion").

The magistrate judge's ruling is AFFIRMED.