

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20072
Conference Calendar

EDMOND B. HEIMLICH,

Plaintiff-Appellant,

versus

HARRIS COUNTY TEXAS; ET AL.,

Defendants,

HARRIS COUNTY TEXAS; JOHNNY B. HOLMES; WERNER VOIGT; TED POE;
JOHN BOONE; BALDWIN CHIN; STUART W. BROWN; JUDY BEDDINGFIELD;
ERNEST W. GODFREY, III; DENNIS RAY KUITHE; STATE OF TEXAS,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-96-CV-2556

December 11, 2002

Before JOLLY, DAVIS, and JONES, Circuit Judges.

PER CURIAM:*

Edmund B. Heimlich appeals the denial of a motion for relief from final judgment filed pursuant to FED. R. CIV. P. 60(b). Heimlich argues that he was entitled to relief because the defendants were not immune from liability. The denial of a Rule

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

60(b) motion, however, does not bring up the underlying judgment for review and is not a substitute for appeal. In re Ta Chi Navigation (Panama) Corp. S.A., 728 F.2d 699, 703 (5th Cir. 1984). He also argues that he is entitled to relief under Rule 60(b)(5) but that rule is inapposite. Heimlich's argument that he was entitled to relief under Rule 60(b)(4) likewise fails inasmuch as he fails to show that the judgment against him was void. New York Life Ins. Co. v. Brown, 84 F.3d 137, 142 (5th Cir. 1996).

Heimlich fails to show that the district court abused its discretion when it denied his motion. Aucoin v. K-Mart Apparel Fashion Corp., 943 F.2d 6, 8 (5th Cir. 1991); Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981).

The judgment of the district court is AFFIRMED. Heimlich's motion for retroactive recusal is DENIED.