

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2582
Conference Calendar

JESSIE L. SPENCER,

Plaintiff-Appellant,

versus

MRS. BAIRD'S BAKERIES, INC.
and INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, Local Union No. 988,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-92-632
- - - - -
(July 20, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Jessie L. Spencer contends that he is entitled to relief from a summary judgment order for the defendants pursuant to Fed. R. Civ. P. 60(b)(1) and (6). The district court's denial of a Rule 60(b) motion is reviewed for abuse of discretion. Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). "It is not enough that the granting of relief might have been

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

permissible, or even warranted--denial must have been so unwarranted as to constitute an abuse of discretion." Id.

Spencer analogizes his case to Eskenazi, in which this Court found that the district court abused its discretion when it determined that the defendants were not entitled to Rule 60(b) relief because the defendants asserted a meritorious defense and because they had had no opportunity to present their side of the controversy before the plaintiff won a default judgment. Eskenazi, 635 F.2d 402-04. Spencer's case is not analogous to Eskenazi. Although Spencer's attorney sought to withdraw like the attorney in Eskenazi, the district court gave Spencer notice that he should retain another lawyer and required that Jennings respond to the pending motions before granting her motion for withdrawal. Moreover, Spencer presented his side of the controversy not just once, but twice, in the form of his lawyer's response to each defendant's motion for summary judgment and his pro se responses. The record does not indicate that Spencer's failure to retain counsel had any impact on the court's decision to grant summary judgment. The court's opinion reflects that it considered the responses filed by Spencer and his counsel when it decided the case on the merits. Accordingly, Spencer fails to show that the district court's denial of his Rule 60(b) motion was so unwarranted as to constitute an abuse of discretion.

The judgment of the district court is AFFIRMED.