IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8883
Conference Calendar

EUGENE WIGLEY,

Plaintiff-Appellant,

versus

WILFORD FLOWERS,

Defendant-Appellee.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. A-93-CV-23

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(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Because Eugene Wigley served his motions for a default judgment and his request for reconsideration more than ten days after the entry of the final judgment in this action, they are treated as post-judgment motions under FED. R. CIV. P. 60(b). See Harcon Barge Co. v. D & G Boat Rentals, Inc., 784 F.2d 665, 666-67 (5th Cir.) (en banc), cert. denied, 479 U.S. 930 (1986). Rule 60(b) permits relief from a final judgment for several reasons, including: mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence that by due diligence could

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* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

not have been discovered in time to move for a new trial under Rule 59(b); void judgment; and "any other reason justifying relief from the operation of the judgment." See FED. R. CIV. P. 60(b). This Court, however, cannot treat an appeal from the ruling on a Rule 60(b) motion as an appeal from the underlying judgment. Aucoin v. K-Mart Apparel Fashion Corp., 943 F.2d 6, 8 (5th Cir. 1991). In addition, Rule 60(b) cannot be used as "an avenue for challenging mistakes of law that should ordinarily be raised by timely appeal." Id. (internal quotation and citation omitted).

The denial of a Rule 60(b) motion is reviewed for an abuse of discretion. First Nationwide Bank v. Summer House Joint Venture, 902 F.2d 1197, 1200 (5th Cir. 1990). Such a review is narrower in scope than the review of a direct appeal. Aucoin, 943 F.2d at 8. The movant, moreover, must show "unusual or unique circumstances justifying such relief." Id. (citation omitted).

Wigley argues that the district court failed to enter an order after entering the final judgment commanding that the action be closed. He also asserts that the docket sheet does not reflect the entry of a final judgment dismissing the action with prejudice. Wigley further suggests that he did not receive a copy of the final judgment and that the district court did not attach a copy of the final judgment to the orders denying his post-judgment motions. The docket sheet, however, reflects that a judgment dismissing the cause with prejudice was entered on April 8, 1993, and that the case was closed on April 8, 1993.

Nothing in the record indicates that Wigley did not receive a copy of the final judgment. Wigley, moreover, was not unfamiliar with the court system and should have kept abreast of the status of his cases.

Exceptional circumstances do not exist in this case, and upholding the district court's denials would cause no injustice: Wigley's suit under 42 U.S.C. § 1983 was against his court-appointed attorney; private attorneys, however, even court-appointed attorneys, are not official state actors and are generally not subject to suit under § 1983. See Mills v. Criminal Dist. Court No. 3, 837 F.2d 677, 679 (5th Cir. 1988). Nonetheless, private attorneys who have conspired with state officials may be held liable under § 1983. Id. In this case, Wigley merely alleged that Flowers, his court-appointed attorney, had demanded that Wigley pay him $10,000 and that Flowers had failed or refused to disclose to the trial court that the indictment against Wigley was improper. Wigley alleged no conspiracy, and nothing in the record indicates that any type of conspiracy occurred.

This appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Although Wigley filed this suit before our warning in Wigley v. Mata, No. 92-8531 at 3 (5th Cir. June 9, 1993) (unpublished), we emphasize that further frivolous actions brought by Wigley in forma pauperis (IFP) may result in an order barring Wigley from filing IFP appeals in this Court.

DISMISSED. See 5th Cir. R. 42.2.