IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10377
Conference Calendar

BENNIE RUTH WILLIS, Individually
and as Administratrix of the Estate
of ERIC WILLIS and CHAVOUS WILLIS,

Plaintiffs-Appellants,

versus

CITY OF FORT WORTH ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 92-CV-157-A
- - - - - - - - - - -
(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Any postjudgment motion challenging the underlying judgment and requests relief other than correction of a purely clerical error and which is served more than ten days after judgment is entered is treated as a motion under Fed. R. Civ. P. 60(b). Harcon Barge Co. v. D & G Boat Rentals, 784 F.2d 665, 667 (5th Cir.)(en banc), cert. denied, 479 U.S. 930 (1986). Any motion alleging substantially the same grounds as a previous motion will be deemed successive, and any appeal based on such a motion is

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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 reviewable by this Court. Charles L.M. v. Northeast Indep. Sch. Dist., 884 F.2d 869, 870 (5th Cir. 1989); Burnside v. Eastern Airlines, 519 F.2d 1127, 1128 (5th Cir. 1975).

Both of Willis' motions filed on January 21, 1994, and March 14, 1994, requested the district court to vacate its dismissal order of May 12, 1992, and reinstate the cause due to lack of notice of the district court's orders. The motions were served well after 10 days of entry of the district court's final judgment on May 14, 1992. Willis admits that her March 14, 1994, motion was a Rule 60(b) motion, stating, "Appellants' motion was brought pursuant to Rule 60(b)(6) and was properly designated a Motion for Relief From Order Dismissing Cause." Willis argues that the March 14, 1994, motion for relief "did not ask the Court to reconsider its ruling of February 11, 1994. Rather, the motion sought to correct the `insufficient affidavit' which the district court found lacking." However, Willis' March 14, 1994, motion was a verbatim copy of the previously denied January 20, 1994, motion. Although Willis failed to attach a referenced affidavit to her January 21, 1994, amended motion, the district court considered the affidavit attached to her original motion. The affidavit and brief attached to her initial motion were virtually the same as those supporting the March 14, 1994, motion. Because the two motions requested more than correction of a clerical error, were served more than 10 days after the appealed judgment was entered, and were based on substantially the same grounds, they must be treated as successive Rule 60(b)

motions. See Charles L.M., 884 F.2d at 870; Harcon, 784 F.2d at 667.

When the time for notice of appeal from the denial of a Rule 60(b) motion has run, the filing of a successive motion alleging substantially the same grounds for relief does not provide a second opportunity for appellate review. Charles L.M., 884 F.2d at 870; Burnside, 519 F.2d at 1128. The filing of the second motion does not interrupt the running of the time for appeal, and dismissal of the appeal is proper if otherwise untimely under Fed. R. Civ. P. 4(a). Charles L.M., 884 F.2d at 870; Eleby v. American Medical Sys., 795 F.2d 411, 412-13 (5th Cir. 1986). Willis did not appeal the denial of her first Rule 60(b) motion or the original dismissal order; she appeals only the district court's March 16, 1994, order denying her successive Rule 60(b) motion.

Without a timely notice of appeal of a reviewable judgment, this court is does not have appellate jurisdiction. Fed. R. App. P. 3(a), 4(a). This Court does not have appellate jurisdiction over the order from which the appeal is taken. See Charles L.M., 884 F.2d at 870; Eleby, 795 F.2d at 412-13.

DISMISSED.