IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10724
Conference Calendar

ROBERT LEE EARL,

Plaintiff-Appellant,

versus

OFFICER JOHNSON, Fort Worth
Police Dept., ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:89-CV-196-K
- - - - - - - - - - -
(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:[*]

Robert Lee Earl appeals the denial of his second motion to reinstate his 1989 civil rights complaint. We construe his motion as one arising pursuant to FED. R. CIV. P. 60(b). "This court reviews the denial of a Rule 60(b) motion only for abuse of discretion." *Aucoin v. K-Mart Apparel Fashion Corp.*, 943 F.2d 6, 8 (5th Cir. 1991). The district court did not abuse its discretion by denying Earl's motion.

A party seeking relief pursuant to Rule 60(b) on the bases

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

of inadvertence, newly discovered evidence, or fraud or misconduct must move for relief within one year of the entry of judgment. FED. R. CIV. P. 60(b). To the extent that Earl seeks relief on the ground that the district court inadvertently dismissed his case, his motion was untimely. Earl filed his first motion 17 months after the district court dismissed his complaint. He filed his second motion 23 months after the district court denied his first motion for reinstatement.

Rule 60(b) imposes no time limit on a party seeking relief on the ground that a judgment is void. *Williams v. Brooks*, 996 F.2d 728, 730 (5th Cir. 1993). Earl contends that the district court erred by dismissing his complaint because he was mentally incompetent. He does not elaborate on that contention beyond merely stating it. "Failure to prosecute an issue on appeal constitutes waiver of the issue." *United States v. Green*, 964 F.2d 365, 371 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 984 (1993). Even a pro se litigant must brief issues on appeal. *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). Earl has failed to brief his contention that the district court's dismissal of his complaint was void because of his insanity. He has abandoned that issue.

A motion for relief pursuant to Rule 60(b) due to "any other reason justifying relief from the operation of the judgment[] . . . shall be made within a reasonable time[.]" FED. R. CIV. P. 60(b). What is a reasonable time "depends on the particular facts and circumstances of the case." *Travelers Ins. Co. v. Liljeberg Enters. Inc.*, 38 F.3d 1404, 1410 (5th Cir. 1994).

Earl did not file his second motion for reinstatement within a reasonable time of the denial of his first motion. Whether or not Earl knew about the order to file a more definite statement before the district court dismissed his complaint, he knew about that order when he filed his first Rule 60(b) motion. Yet he waited almost two years after the district court denied that motion to file his second Rule 60(b) motion. Earl has not shown that he somehow was prevented from discovering the legal bases of his second motion or from submitting that motion to the district court. Additionally, Earl has not shown that his alleged insanity was to blame for the delay in filing his second Rule 60(b) motion.

Earl's contention that the district court should have appointed a guardian *ad litem* pursuant to FED. R. CIV. P. 17(c) to represent him is without merit. Earl did not raise his mental incompetence as an issue until his second Rule 60(b) motion. He did not request appointment of a guardian in the district court. He does not allege, nor does the record indicate, that appointment of a guardian *ad litem* would have assisted him in a manner that would have changed the ultimate outcome of the Rule 60(b) motion or of the present appeal. Nor do Earl's pleadings indicate that he was mentally incompetent to a degree requiring appointment of a guardian.

Because Earl's appeal is frivolous, it is hereby DISMISSED.

Earl's motion for sanctions against King and Johnson's attorney is hereby DENIED.