

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20548
Summary Calendar

PAUL VINCENT,

Plaintiff-Appellant,

v.

ANTHONY M. FRANK, Postmaster General
United States Postal Service and
MICHAEL S. COUGHLIN,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-90-3030)

(April 4, 1995)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Paul Vincent, *pro se*, appeals the district court's denial of his motion to reconsider the grant of summary judgment for defendant Anthony M. Frank. We affirm the decision of the district court.

I. FACTUAL AND PROCEDURAL BACKGROUND

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Vincent was terminated from employment with the United States Postal Service on February 11, 1987. Vincent claims that his termination was wrongful under the Rehabilitation Act of 1974 and under Title VII of the Civil Rights Act of 1964 because he was a "qualified, handicapped employee". He describes his handicap as "alcoholism". He filed a complaint with the Equal Employment Opportunity Commission, which rendered its final decision on June 14, 1990, and he filed a civil action for employment discrimination on September 10, 1990. On July 13, 1992, the district court granted defendants' motion for summary judgment because Vincent failed to file the civil action within 30 days of the final decision of the EEOC. We affirmed this decision in May of 1993. On March 25, 1994, Vincent filed a motion requesting the district court to vacate the order of summary judgment and to reinstate his cause of action pursuant to Federal Rules of Civil Procedure 60(a) or 60(b)(1). In his request for vacation and reinstatement, Vincent argued that he had filed an amended complaint, which included a verification of an unsworn letter filed by him with his original complaint, relating to his receipt of final notice from the EEOC. He claimed that the amended complaint was mistakenly not filed with the record by the clerk. The district court denied this motion, stating that it found no indication that Vincent had filed an amended complaint. Vincent then filed a motion for reconsideration of this denial. This motion was also denied by the district court, and this appeal followed.

II. STANDARD OF REVIEW

We review motions for relief from a judgment or order only for abuse of discretion. "Motions under Rule 60(b) are directed to the sound discretion of the district court, and [a district court's] denial of relief upon such motion will be set aside on appeal only for abuse of that discretion." Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1980); see also Smith V. Alumax, 868 F.2d 1469, 1471 (5th Cir. 1989).

III. DISCUSSION

Pursuant to Federal Rule of Civil Procedure 60(a), the court may correct any clerical mistakes in judgments, orders, or other parts of the record. Rule 60(b) allows the court to relieve a party from a final judgment, order, or proceeding for, among other reasons, mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud. Smith, 868 F.2d at 1471. Vincent filed a motion requesting such relief from the district court, claiming that his amended complaint was not included in the record, thereby leaving his allegations unsworn or unverified. He contends that inclusion of his "verification" would validate his claim that he properly notified the EEOC of his address change. Thus, the receipt of the notice of final decision by his former attorney would be inapplicable to him, and his filing deadline would be extended to 30 days after the notice was actually received by him on August 19, 1990.

Vincent claims that the summary judgment should be vacated because his amended complaint was mistakenly not filed with the

record by the clerk, thus entitling him to relief under Rule 60. He points to an entry in the docket sheet on January 6, 1992, indicating receipt of "plaintiff's package containing 9 separate complaint forms, Original Amendments, summons forms and mail notices." This entry indicates, however, that the items in the package were filed for the purpose of having summonses issued, not for the purpose of filing an amended complaint. A subsequent order of the district court, granting in forma pauperis status, directed that in the event Vincent's authorized process server came to the clerk's office to recover Vincent's material, the copies would be returned to him. Shortly thereafter, seven summonses were issued, and presumably the contents of Vincent's package were returned to the process server. As the district judge correctly noted, there is no amended complaint in the record.

Having reviewed the entire file and docket sheet in this case, we find no abuse of discretion by the district court in denying Vincent's motion to reconsider.

IV. CONCLUSION

For the foregoing reasons, the decision of the district court is AFFIRMED.