

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30169  
Conference Calendar

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ANDREW B. CHARVET,

Plaintiff-Appellant,

versus

HEALTH AND HUMAN SERVICES,  
aka Donna Shalala, Secretary of  
Health and Human Services,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. CA 88-5521 I

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(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:\*

Andrew B. Charvet challenges the denial of his motion for relief pursuant to Fed. R. Civ. P. 60(b).

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). Under this standard, "[i]t is not enough that the granting of relief might have been permissible, or even warranted--denial must be so unwarranted as to constitute an abuse of discretion." Seven Elves, Inc. v.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981) (emphasis in original).

"[A]ppellate review of the denial of such a motion `must be narrower in scope than review of the underlying order of dismissal . . . ." Phillips v. Insurance Co. of N. America, 633 F.2d 1165, 1167 (5th Cir. 1981) (citation omitted).

"[T]he denial of a Rule 60(b) motion does not bring up the underlying judgment for review." Matter of Ta Chi Navigation (Panama) Corp. S.A., 728 F.2d 699, 703 (5th Cir. 1984) (citation omitted). This Court "`may not treat the appeal from the ruling on the rule 60(b) motion as an appeal from the [underlying order] itself.'" Aucoin v. K-Mart Apparel Fashion Corp., 943 F.2d 6, 8 (5th Cir. 1991) (citation omitted). A Rule 60(b) motion thus does not "vitiating the requirement of a timely appeal." Aucoin, 943 F.2d at 8.

Charvet does not supply the Court with any reason whatsoever justifying relief from the operation of the summary judgment in favor of the Secretary. Therefore, Charvet fails to demonstrate that 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.