

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30506
Conference Calendar

NICOLE MARIE CARTER, as
Administratrix of and the Estate
of Vergil Braud, ET AL.,

Plaintiffs,

NICOLE MARIE CARTER,
Etc.,

Plaintiffs-Appellants,

versus

KEVIN FENNER ET AL.,

Defendants-Appellees.

NICOLE MARIE CARTER, Administratrix
of the Estate of Vergil Braud,

Plaintiff-Appellant,

versus

KEVIN FENNER ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 92-CV-3496 c/w 92-CV-3497
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(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

The appellants seek to appeal the district court's grant of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the defendants' motion to set aside the parties' consent judgment, pursuant to FED. R. CIV. P. 60(b). The consent judgment awarded appellants \$1 million in settlement of their personal injury suit against appellees. We are without jurisdiction to consider the appeal.

An order granting a Rule 60(b) motion is interlocutory and non-appealable. *Parks v. Collins*, 761 F.2d 1101, 1104 (5th Cir. 1985). The plaintiffs contend that we should consider their appeal under the collateral order doctrine. Under that doctrine, we may consider appeals of non-final judgments "that are conclusive, that resolve important questions completely separate from the merits, and that would render such important questions effectively unreviewable on appeal from final judgment in the underlying action." *Digital Equip. Corp. v. Desktop Direct, Inc.*, ___ U.S. ___, 114 S. Ct. 1992, 1995-96 (1994). Assuming, arguendo, that the plaintiffs satisfy the first two criteria of the collateral order doctrine, they fail to satisfy the third criterion.

The plaintiffs contend that they will lose their right to appeal the grant of the City's Rule 60(b) motion if we do not allow them to pursue their appeal now. This is incorrect. An order granting Rule 60(b) relief is appealable following the entry of final judgment. *See, e.g., Picco v. Global Marine Drilling Co.*, 900 F.2d 846, 849 n. 4 (5th Cir. 1990).

The plaintiffs contend that they will lose their implicit contractual right to avoid trial if we do not consider their

appeal. The Supreme Court explicitly rejected an identical argument in *Digital*. *Digital*, 114 S. Ct. at 2000-02.

The plaintiffs' attempt to distinguish *Digital* is unavailing. The plaintiffs' constitutional arguments relate to the important-issue criterion of the test for review of collateral orders, and not to the reviewability criterion. We have declined to consider interlocutory appeals of constitutional issues for failure to satisfy the reviewability criterion. See, e.g., *In re Koerner*, 800 F.2d 1358, 1360-61 (5th Cir. 1986). The plaintiffs have not shown that their constitutional contentions could not be vindicated fully on appeal following the entry of a final judgment.

APPEAL DISMISSED.