

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10238
Conference Calendar

RON MCCLURE,

Plaintiff-Appellant,

versus

C. R. ENGLAND & SONS, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:98-CV-147-Y

October 19, 1999

Before JONES, SMITH, and STEWART, Circuit Judges.

PER CURIAM:*

Ron McClure appeals the granting of defendant's Rule 60(b) motion to amend the final judgment from a dismissal without prejudice to a dismissal with prejudice of McClure's pro se action alleging a violation of the Fair Labor Standards Act. McClure argues that the district court abused its discretion in granting the Rule 60(b) motion because of misconduct by C.R. England during discovery.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The district court did not abuse its discretion in granting the Rule 60(b) motion because McClure engaged in clear delay and contumacious conduct and a dismissal with prejudice was the appropriate remedy. See Halicki v. Louisiana Casino Cruises, Inc., 151 F.3d 465, 470 (5th Cir. 1998), cert. denied, 119 S. Ct. 1143 (1999); Coane v. Ferrara Pan Candy Co., 898 F.2d 1030, 1032 (5th Cir. 1990). McClure disregarded the Federal Rules of Civil Procedure, abused the discovery process by acting in contravention of the initial scheduling order, engaged in further abuse of the discovery process following a protective order, and, following his dismissal without prejudice, re-filed his case in an effort to escape sanctions for his behavior.

McClure has moved for the award of reasonable costs. The motion is DENIED because McClure is not entitled to an award of costs. See Fed. R. App. P. 39(a)(2).

AFFIRMED. MOTION DENIED.