

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2271
Conference Calendar

ALBERT ZWEIFEL, and wife,
SANDRA ZWEIFEL,

Plaintiffs-Appellants,

versus

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-88-2667
- - - - -

August 20, 1993

Before JOLLY, JONES, and DUHE, Circuit Judges.

PER CURIAM:*

Albert and Sandra Zweifel may not appeal the summary judgment because they noticed no appeal therefrom. Fed. R. App. P. 3(a), (c). They may not appeal the denial of their motion for new trial because, it having been served more than ten days after judgment, their own delay deprived the district court of jurisdiction over it. Fed. R. Civ. P. 59(b); Tarlton v. Exxon, 688 F.2d 973, 977 (5th Cir. 1982), cert. denied, 463 U.S. 1206 (1983). The only issue on appeal is the denial of the Rule 60(b)

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

motion, which we review for abuse of discretion. See Pryor v. United States Postal Service, 769 F.2d 281, 286 (5th Cir. 1985).

To obtain relief from judgment for excusable neglect, a movant must show unusual circumstances. Fed. R. Civ. P. 60(b); Pryor, 769 F.2d at 287. Rule 60(b) may not be used to challenge a mistake of law that should have been raised in a timely appeal. Id. at 286.

A belief that more discovery is needed is no excuse to ignore a motion for summary judgment. Fed. R. Civ. P. 56(c), (e), (f); United States v. McCallum, 970 F.2d 66, 71 (5th Cir. 1992); International Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1267-68 (5th Cir. 1991), cert. denied, 112 S. Ct. 936 (1992). A party may not assume that disposition of a motion will be delayed without inquiring into the status of the motion. See Pryor, 769 F.2d at 287. Counsel's social and familial concerns are no excuse for letting the time for serving a motion for new trial lapse. The Zweifels have provided us with no basis for determining that the district court abused its discretion in denying the Rule 60(b) motion.

APPEAL DISMISSED.