

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10816
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

\$9,380 IN U.S. CURRENCY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:88-CV-828-E
- - - - -

June 30, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

We liberally construe Isaac Ehi's "Pro Se Motion for Return of Property" as a request for relief from judgment under Fed. R. Civ. P. 60(b), rather than as an untimely appeal or a motion filed under Fed. R. Crim. P. 41(e). We review the denial of such a motion for an abuse of discretion. Latham v. Wells Fargo Bank, N.A., 987 F.2d 1199, 1203 (5th Cir. 1993). A Rule 60(b) motion may not be used as a substitute for filing a timely notice of appeal. Id.

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Ehi's pro se motion was filed well after the time to file an appeal. He presented no basis to the district court on which to justify reconsideration of the district court's 1991 judgment, and he offers none in his appellant's brief. Although a district court's nearly verbatim adoption of the prevailing party's proposed findings of fact and conclusions of law has long been discouraged, Amstar Corp. v. Domino's Pizza, Inc., 615 F.2d 252, 258 (5th Cir.), cert. denied, 449 U.S. 899 (1980), the practice does not, without more, establish any fundamental injustice. Ehi participated in a full trial on the merits during which he testified and, through counsel, submitted documentary evidence, presented arguments, and cross-examined opposing witnesses. The district court did not abuse its discretion by denying Ehi's motion, and the appeal is DISMISSED as frivolous. See Fifth Cir. R. 42.2.

Ehi's motion for leave to file his reply brief out of time is GRANTED. We do not consider those arguments raised for the first time in his reply brief - that the forfeiture proceeding violates the Double Jeopardy Clause, and that he did not receive notice of the district court's 1991 judgment. See Yohey v. Collins, 985 F.2d 222, 225 (5th Cir. 1993). Accordingly, the Government's motion for leave to respond to the new issues is DENIED as unnecessary.

DISMISSED.