

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2026

Thomas B. Plunkett, III
Clerk

No. 24-10848

DAVID TYLER MOSS; BRANDON KEATING,

Plaintiffs—Appellees,

versus

BRIAN MARTIN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:14-CV-3088

Before JONES, SOUTHWICK, AND DUNCAN, *Circuit Judges.*

PER CURIAM:*

In 2016, an \$18,600,000 judgment was entered in a United States district court against co-defendants Marko Princip and Brian Martin for claims related to a partnership dispute. Six years later, creditors sought to collect on that judgment. For the first time in these proceedings, Martin returned to the district court and alleged that he never authorized his co-defendant's attorney to represent him. He argued that the attorney's

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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conduct amounted to fraud on the court and he moved to set aside the judgment pursuant to Federal Rule of Civil Procedure 60(d)(3). district court determined that Martin did not establish fraud on the court by clear and convincing evidence. Martin now turns to this court for relief. We AFFIRM.

Martin was time-barred from seeking relief under the traditional vehicle for setting aside a judgment. *See* FED. R. CIV. P. 60(b). Instead, Martin moved under Rule 60(d)(3), which permits a court to “set aside a judgment for fraud on the court” absent any time limitations. *See* FED. R. CIV. P. 60(d)(3). We review denial of relief under Rule 60(d) for abuse of discretion. *Wilson v. Johns-Manville Sales Corp.*, 873 F.2d 869, 871 (5th Cir. 1989).

The standard for establishing fraud under Rule 60(d)(3) is demanding. Plaintiffs have the burden to prove fraud on the court by clear and convincing evidence. *Kinnear-Weed Corp. v. Humble Oil & Ref. Co.*, 441 F.2d 631, 636 (5th Cir. 1971) (collecting authorities). “[O]nly the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud on the court.” *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978) (quoting *United States v. Int’l Tel. & Tel. Corp.*, 349 F. Supp. 22, 29 (D. Conn. 1972), *aff’d sub nom. Nader v. United States*, 410 U.S. 919 (1973)). It encompasses frauds that are “perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.” *Kermit Med. Prods., Inc. v. N. & H. Instruments, Inc.*, 616 F.2d 833, 837 (5th Cir. 1980) (quoting *Kupferman v. Consol. Rsch. & Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972)). The movant must show “an unconscionable plan or scheme which is designed to improperly influence the court in its decision.” *Rozier*, 573 F.2d at 1338 (quoting *England v. Doyle*, 281 F.2d 304, 309 (9th Cir. 1960)).

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On appeal, Martin contends that his unauthorized representation deprived him of his due process right to be notified and heard. Although the facts as alleged certainly raise questions about the quality of representation Martin received, he does not establish by clear and convincing evidence that this conduct amounted to an “unconscionable plan or scheme.” *Rozier*, 573 F.2d at 1338. Martin offers no evidence, aside from speculation and a signed but unsworn witness statement, to show that his attorney lacked authority to represent him or that any such conduct was designed to improperly influence the court. The district court found that showing insufficient, and Martin offers no basis on appeal to set aside that determination.

Martin also does not explain how the totality of this conduct amounts to a scheme that could not have been uncovered until this late stage. A party cannot sit on its rights for years following an adverse judgment and then bring a collateral attack on that judgment based on grounds that were available to it long before:

A party that has had an opportunity to litigate the question of subject-matter jurisdiction may not, however, reopen that question in a collateral attack upon an adverse judgment. It has long been the rule that principles of res judicata apply to jurisdictional determinations — both subject matter and personal.

Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 n.9 (1982).

Martin fails to show that the district court abused its discretion in denying relief under Rule 60(d)(3).

AFFIRMED.