United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 3, 2026
Thomas B. Plunkett, III
Clerk

No. 26-60060
Summary Calendar

PPF 5, L.L.C.,

Plaintiff—Appellant,

versus

Delta Workover, L.L.C.; Robert A. Heidel, Jr.; Houston Specialty Insurance Company; Imperium Insurance Company; Unknown Insurers 1-5,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:25-CV-28

Before Jones, Ho, and Wilson, *Circuit Judges*.

Per Curiam:[*]

PPF 5, L.L.C. ("PPF 5") contends that its lawyer voluntarily dismissed its case without permission, and the district court incorrectly denied PPF 5's Rule 60(b) motion to reopen the case. But the district court

[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

did not err, and PPF 5 can refile its claim in state or federal court whenever it chooses. Therefore, we AFFIRM.

Background

PPF 5 originally filed this case in the Western District of Louisiana. The case was transferred to the Southern District of Mississippi because venue was improper in Louisiana. After transfer, no counsel for PPF 5 made an appearance until the court ordered one on June 2, 2025. On June 6, Attorney Todd Waycaster filed a Notice of Appearance on behalf of PPF 5. After attorneys for all parties entered appearances, the court scheduled a hearing for June 18. But the day of the hearing, Waycaster filed a Notice of Voluntary Dismissal Without Prejudice under FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A). The case was closed. On December 22, PPF 5 sought to reinstate the case. PPF 5 claimed, through an affidavit by CEO David Martin, that Waycaster filed the voluntary dismissal without authorization. Martin's affidavit stated that Waycaster emailed him a proposed state court lawsuit that Martin had requested be filed in Wilkinson County, Mississippi months earlier. Waycaster was paid attorneys' fees to file that state court action. By the time PPF 5 filed its Rule 60(b) motion, it had terminated Waycaster. The district court denied the motion because PPF 5 failed to show it was entitled to relief under any of the asserted Rule 60(b) provisions. The district court also noted that PPF 5 could file a new and separate action in any appropriate state or federal court because the dismissal was without prejudice. PPF 5 timely appealed.

Discussion

PPF 5 sought relief under Rule 60(b)(1), (3), and (6). FED. R. CIV. P. 60(b). The district court found relief inappropriate under each of the Rule's provisions. On appeal, contending that the denial of relief was reversible error, PPF 5 asks this court to address four "focal issues" during review. PPF 5 seeks *de novo* review of the district court's decision, but

"[d]istrict courts' Rule 60(b) rulings are reviewed 'only for abuse of discretion.'" *BLOM Bank SAL v. Honickman*, 605 U.S. 204 (2025). We address the focal issues first and in order.

First, PPF 5 submits that Waycaster violated the Mississippi Rules of Professional Conduct ("MRPC"). PPF 5 uses this proposition to urge that an attorney's violation of the MRPC by voluntarily dismissing a case without authorization is a sufficient basis for a court to grant Rule 60(b) relief. But this is the first time PPF 5 has raised this argument. "[A]n issue will not be addressed when raised for the first time on appeal unless it is a purely legal question and failure to consider the issue will result in a miscarriage of justice." *Rollins v. Home Depot USA*, 8 F.4th 93, 397–98 (5th Cir. 2021) (citing *Essinger v. Liberty Mut. Fire Ins. Co.*, 534 F.3d 450, 453 (5th Cir. 2008). The exception does not apply. There is no miscarriage of justice here if we do not consider the argument because PPF 5 can refile these same claims in any state or federal court with jurisdiction and where venue is proper.[1]

Second, PPF 5 asserts the district court failed to consider relevant Supreme Court precedent holding that a voluntary dismissal without prejudice may qualify for relief under FED. R. CIV. P. 60(b). *Waetzig v. Halliburton Energy Servs., Inc.*, 604 U.S. 305 (2025). But the district court explicitly found that voluntary dismissals without prejudice are eligible for vacatur on a Rule 60(b) motion, citing *Yesh Music v. Lakewood Church*. 727 F.3d 356, 362–63 (5th Cir. 2013). Indeed the district court's opinion *is a consideration on a Rule 60(b) motion of whether to vacate a voluntary dismissal*. The district court applied the correct law. This is a non-issue.

Third, PPF 5 asks this Court to consider "[w]hether the District Court failed to utilize its inherent equity powers and authority to provide

[1] PPF 5 does not dispute that it can refile.

[PPF 5] relief." PPF 5 does not develop this argument or provide any support for this position. It is forfeited. *Schnell v. State Farm Lloyds*, 98 F.4th 150, 161 (5th Cir. 2024) ("A party may forfeit an argument through inadequate briefing in several ways, such as by failing to offer any citation to authority.").

Fourth, PPF 5 asserts that "the District Court failed to consider any alternative and lesser prejudicial impact upon [PPF 5] . . . to reinstate the subject civil action." This is off base. This language concerns possible dismissal with prejudice as a sanction or penalty against a party, as demonstrated by PPF 5's proffered authorities. *See, e.g.*, *Rogers v. Kroger Co.*, 669 F.2d 317 (5th Cir. 1982); *Hornbuckle v. Arco Oil & Gas*, 732 F.2d 1233 (5th Cir. 1984); *Callip v. Harris Cnty. Welfare Dep't*, 757 F.2d 1513 (5th Cir. 1985). Those cases are inapposite to the district court's refusal to reverse a voluntary dismissal without prejudice.

In arguing the district court erred by denying Rule 60(b) relief, PPF 5 cites inapposite precedents. *See, e.g.*, *Norris v. Salazar*, 277 F.R.D. 22 (D.D.C. 2011) (granting Rule 60(b)(6) relief where attorney failed to oppose a motion to dismiss); *Ethan Michael Inc. v. Union Township*, 392 F. App'x 906 (3d Cir. 2010) (affirming denial of Rule 60(b)(6) relief where attorney failed to oppose a motion to dismiss); *Cmty. Dental Servs. v. Tani*, 282 F.3d 1164 (9th Cir. 2002) (holding that where a client can show "gross negligence that is inexcusable" on the part of counsel, a default judgment may be set aside). Each of these cases involved an adverse dismissal on the merits or a default judgment. And these cases only hold that a district court may find Rule 60(b)

relief appropriate; none of them supports that it would be reversible error not to grant that relief.[2]

The only issue properly before this Court, then, is PPF 5's assertion that the district court abused its discretion in denying Rule 60(b) relief because Attorney Waycaster's conduct was egregious. In reviewing the district court's judgment of dismissal without prejudice, we find no errors of law or fact that constitute an abuse of discretion. AFFIRMED.

[2] PPF 5 also cites criminal cases, which have different attorney duty rules because of the constitutional right to effective counsel. *See, e.g.*, *Holland v. Florida*, 560 U.S. 631 (2010). This is not a criminal case.