

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CARL CAVALIER	*	CIVIL ACTION
	*	
VERSUS	*	DOCKET NO. 21-656
	*	
STATE OF LOUISIANA: DEPT. OF	*	JUDGE JOHN W. DEGRAVELLES
PUBLIC SAFETY & CORRECTIONS:	*	
PUBLIC SAFETY SERVICES; OFFICE	*	MAGISTRATE RICHARD L. BOURGEOIS, JR.
OF STATE POLICE	*	

OPPOSITION TO MOTION FOR REHEARING ON RULING

Defendants, the Louisiana Department of Public Safety & Corrections (Office of State Police) and Colonel Lamar Davis (collectively, “State Police”), oppose the Motion for Rehearing on Ruling by Plaintiff, Carl Cavalier, seeking reconsideration of this Court’s Ruling and Order granting the State Police’s Motion to Enforce Settlement Agreement (Rec. Doc. 56).

“[A] motion for reconsideration is an extraordinary remedy, to be used sparingly in the interest of finality and conservation of judicial resources.”¹ Cavalier’s motion for post-judgment relief should be evaluated pursuant to Rule 59(e) or Rule 60(b).² Under either Rule, Cavalier’s motion should be denied.

A. Rule 59

To the extent Cavalier seeks relief pursuant to Rule 59, the motion should be denied as untimely: “[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.”³ Here, the Ruling and Order at issue was entered May 22, 2023 (Rec.

¹ *Kiper v. Ascension Par. Sch. Bd.*, 3:14-00313-JWD-RLB, 2016 WL 204480, at *3 (M.D. La. 1/15/16).

² *Kiper*, at *2.

³ FRCP 59(e); FRCP 6(b)(2) provides the Rule 59(e) deadline may not be extended.

Doc. 88). Cavalier’s Motion for Rehearing was filed 30 days later on June 21, 2023 (Rec. Doc. 92). Consequently, post-judgment relief under Rule 59 is unavailable.

B. Rule 60

Cavalier likewise is not entitled to Rule 60 relief.

1. Local Rule 16(c) – Rule 60(b)(1) Mistake

Cavalier first argues for relief based on the failure of counsel to file a Notice of Settlement pursuant to Local Rule 16(c) upon conclusion of the October 6, 2022 settlement conference before Magistrate Bourgeois.⁴ However, the Magistrate issued an Order that same date noting “the parties were able to reach a settlement” (Rec. Doc. 40). The Court issued a sixty-day Order of Dismissal the day following (Rec. Doc. 41). Therefore, there was no need for counsel to independently inform the Court of the compromise pursuant to Local Rule 16(c). Regardless, this “mistake,” if in fact it could be so characterized, is excusable, has no impact on the merits of the dispute and therefore is not supportive of relief under Rule 60(b)(1).⁵

2. Failure to Consider Evidence – Rule 60(b)(2)

Cavalier next argues the Court failed to consider certain evidence regarding communications with his former counsel, but does not (and cannot) contend this evidence is “newly discovered” as mandated by Rule 60(b)(2).⁶ “For purposes of Rules 59 and 60, ‘newly discovered evidence’ is a narrowly construed term, encompassing only data that could not have been unearthed and assembled prior to the ruling sought to be vacated.”⁷ Cavalier’s

⁴ Motion for Rehearing (Rec. Doc. 92), paras. 1, 2 and 13.

⁵ *Fed. Savgs. & Loan Ins. Corp. v. Kroenke*, 858 F.2d 1067, 1069 (5 Cir. 1988)(mover for post-judgment relief under Rule 60(b)(1) must show “a fair probability of success on the merits existed if the judgment were to be set aside.”).

⁶ Motion for Rehearing (Rec. Doc. 92), paras. 3 and 8.

⁷ *Kiper*, at *4.

communications with his former counsel (who withdrew October 27, 2022)⁸ occurred months prior to the February 24, 2023 Magistrate Report and Recommendation (Rec. Doc. 83), and months prior to this Court’s May 22, 2023 Ruling and Order granting the State Police’s Motion to Enforce Settlement Agreement. Consequently, these communications cannot qualify as “newly discovered.” Moreover, Cavalier does not argue, much less show, that consideration of this evidence “clearly would have produced a different result if presented before the original judgment.”⁹ Accordingly, relief is not available under Rule 60(b)(2).

3. Misconduct – Rule 60(b)(3)

Rule 60(b)(3) provides post-judgment relief in certain circumstances based on “misconduct by an opposing party.” “A party making a Rule 60(b)(3) motion must establish (1) that **the adverse party** engaged in fraud or other misconduct, and (2) that this misconduct prevented the moving party from fully and fairly presenting his case.”¹⁰ Here, Cavalier appears to seek relief based on alleged misconduct of his former counsel.¹¹ Cavalier does not argue that the State Police or its counsel engaged in fraud or misconduct or interfered with his case in any way. Accordingly, Cavalier has failed to allege misconduct by the adverse party as required by the Rule. Moreover, Cavalier’s complaint regarding his former counsel is founded on his allegation that prior to the settlement conference he informed counsel he would not agree to any settlement that did not include reinstatement. Even if true, this fact is irrelevant. Cavalier, not

⁸ Rec. Doc. 45 – Order Granting Motion to Withdraw.

⁹ *Kiper*, at *4.

¹⁰ *U.S. v. City of New Orleans*, 731 F.3d 434, 442 (5 Cir. 2013)(emphasis added).

¹¹ Motion for Rehearing (Rec. Doc. 92), paras. 4 - 7.

his former attorney, personally accepted the settlement terms during the settlement conference – and those terms did not include reinstatement.¹² Relief is unavailable under Rule 60(b)(3).

4. Re-Hashing Arguments – Rule 60(b)(6)

Finally, Cavalier argues reconsideration is justified because the Court should have applied Louisiana law requiring a compromise be reduced to writing.¹³ Cavalier took the opposite position in prior pleadings contending federal law controlled.¹⁴ Regardless, the Magistrate Judge, after extensive analysis, concluded that under either law the parties had reached a binding compromise.¹⁵ Because “[a] motion for reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court already has ruled,”¹⁶ Cavalier has failed to show entitlement to relief under Rule 60(b)(6).

C. Conclusion

Cavalier’s motion is untimely under Rule 59. And, he has failed to show any grounds for the exercise of the “extraordinary remedy” of post-judgment relief under Rule 60. Defendants, the Louisiana Department of Public Safety & Corrections and Colonel Lamar Davis, pray that Cavalier’s Motion for Rehearing on Ruling be denied.

¹² Cavalier Response Memorandum (Rec. Doc. 70), p. 4 “Mr. Cavalier caved and agreed to an oral version of the settlement . . .”.

¹³ Motion for Rehearing (Rec. Doc. 92), paras. 10-12.

¹⁴ Cavalier Opposition to Motion to Enforce Settlement (Rec. Doc. 63), pp. 1-2.

¹⁵ Report and Recommendation (Rec. Doc. 83), pp. 6-9.

¹⁶ *Kiper*, at *3.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2023, a copy of Defendants' *Opposition to Motion for Rehearing on Ruling* was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be forwarded to all counsel by operation of the Court's electronic filing system, and notice of this filing will be forwarded: (1) electronically to *pro se* Plaintiff, Carl Cavalier, at KarlCavalier@yahoo.com in accordance with the Pro Se E-Service and E-Notice Consent Form (Rec. Doc. 47), and (2) by mail to *pro se* Plaintiff, Carl Cavalier, at his last known address (248 Ciera Dr., Houma, La. 70364).

/s/ Ben L. Mayeaux