

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

MARVIN DAVIS,

Plaintiff,

vs.

CIVIL ACTION  
No. 01-3186-GTV

CHARLES SIMMONS, et al.,

Defendants.

ORDER

By an order entered September 5, 2002, the court dismissed plaintiff's complaint. On March 22, 2004, the court denied plaintiff's motion to alter and amend that judgment. On June 29, 2004, the Tenth Circuit Court of Appeals affirmed the final judgment entered in this matter. On January 10, 2005, the Supreme Court denied plaintiff's petition for writ of certiorari.

Before the court is plaintiff's motion for relief from judgment, Fed.R.Civ.P. 60(b)(6), filed February 24, 2005.

Rule 60(b)(6) provides in relevant part that a court may relieve a party from the operation of a final judgment for any reason beyond the five specific reasons enumerated in the rule.<sup>1</sup>

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<sup>1</sup>Rule 60(b) also provides relief from a final judgment for: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; or (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Relief under Rule 60(b) is "extraordinary and may be granted only in exceptional circumstances." Amoco Oil Co. v. United States Environmental Protection Agency, 231 F.3d 694, 697 (10th Cir. 2000). A 60(b) motion is not a vehicle to reargue the merits of the underlying judgment, to advance new arguments which could have been presented in the parties' original motion papers, or as a substitute for appeal. Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000); Cashner v. Freedom Stores, Inc., 98 F.3d 572, 576-77 (10th Cir. 1996).

Here, plaintiff argues anew against the court's sua sponte dismissal of this matter pursuant to 42 U.S.C. 1997e(a), and his arguments are clearly foreclosed by Tenth Circuit authority in Steele v. Federal Bureau of Prisons, 355 F.3d 1204, 1210 (10th Cir. 2003), and Ross v. County of Bernalillo, 365 F.3d 1181 (10th Cir. 2004). Finding no basis has been demonstrated for granting the extraordinary relief afforded under Rule 60(b)(6), the court denies plaintiff's motion.

IT IS, THEREFORE, BY THE COURT ORDERED that plaintiff's motion for relief from judgment (Doc. 25) is denied.

**IT IS SO ORDERED.**

Dated at Kansas City, Kansas, this 18th day of April 2005.

/s/ G. T. VanBebber  
G. T. VANBEBBER  
United States Senior District Judge