

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

PATRICK C. LYNN,

Plaintiff,

v.

CASE NO. 06-3172-SAC

RENEE ANDERSON-VARELLA,
et al.,

Defendants.

O R D E R

This matter was dismissed and all relief denied by Memorandum and Order entered January 26, 2007. Plaintiff previously filed a Notice of Appeal (Doc. 24). The matter is currently before the court upon a pleading filed by plaintiff entitled "Motion for Additional 30 days Time Extension to Pay Appeal Fee; & Motion for Relief From Judgment & Request for Oral Arguments . . . for Leave to File Amended Complaint; & TRO Motion/Hearing Request Amended Notice of Appeal (Doc. 28).

Plaintiff's Motion for Extension of Time of 30 days in which to pay the appellate filing fees is granted. In response to plaintiff's inquiry, the court states that \$455.00 is the normal appellate fee, that fees were increased long before he filed the instant lawsuit, and that no additional or extra charges have been imposed in his particular case.

The remainder of plaintiff's motion, which was not filed within ten days of the judgment entered herein, is treated as a Motion for Relief from Judgment under FRCP 60(b). Relief under

Rule 60(b) is discretionary and is warranted only in exceptional circumstances. Van Skiver v. United States, 952 F.2d 1241, 1243-44 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992). A litigant shows exceptional circumstances by satisfying at least one of Rule 60(b)'s six grounds for relief from judgment. Id. Plaintiff's motion does not set forth any of the grounds warranting relief under Rule 60(b). Nor does his motion or the record show any basis for such relief. The allegations made in support of plaintiff's motion basically reargue the issues already addressed and dismissed by the court, and challenge the legal correctness of the court's judgment. Such arguments may have been properly brought under Rule 59(e) within ten days of the judgment or on direct appeal; however, they do not justify relief from judgment pursuant to Rule 60(b). The court concludes that plaintiff fails to state grounds for relief under Rule 60(b).

IT IS THEREFORE ORDERED that plaintiff's motion for extension of time to pay fees (Doc. 28) is granted; and plaintiff is given thirty (30) days in which to submit the appellate filing fees of \$455.00.

IT IS FURTHER ORDERED that plaintiff's Rule 60(b) motion for relief from judgment (Doc. 28) is denied.

IT IS SO ORDERED.

Dated this 27th day of March, 2007, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge