NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 19, 2023*
Decided January 26, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1328

CHRISTOPHER J. HOWARD,
Plaintiff-Appellant,

v.

ANTHONY WILLS,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Illinois.

No. 3:21-cv-00719-SMY

Staci M. Yandle,
Judge.

* The appellee was not served with process and is not participating in this appeal. We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. Fed. R. App. P. 34(a)(2)(C).

O R D E R

Christopher Howard, an Illinois prisoner, appeals the district court's denial of his motion to set aside the judgment. *See* FED. R. CIV. P. 60(b)(1). Because Howard has not identified a mistake in that judgment, we affirm.

Howard sued his warden under the Federal Tort Claims Act, asserting that he was unlawfully seized in violation of his Fourth Amendment rights. At screening, the district court dismissed his complaint with prejudice for failure to state a claim. *See* 28 U.S.C. § 1915A. The district court concluded that Howard could not sue his warden under the Act, which does not provide for suits against state officials, and that even if Howard could be understood to state a constitutional claim under 42 U.S.C. § 1983, his suit would be untimely. Howard then tried to revive his case by filing an amended complaint that named the United States as a defendant.[1] The district court construed this pleading as a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e) and denied it.

Howard appealed. Litigants generally must file a notice of appeal within 30 days of either the entry of judgment or the order they seek to appeal, *see* FED. R. APP. P. 4(a)(1)(A), and Howard appealed 40 days after the order he sought to challenge (the denial of his Rule 59(e) motion). He nevertheless argued that he should have had 60 days to appeal under Federal Rule of Appellate Procedure 4(a)(1)(B) because, in his view, the United States was a party to his case. Without commenting on that argument, we dismissed his appeal because he filed it more than 30 days after the order he sought to challenge.

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[1] This was improper. The Federal Employees Liability Reform and Tort Compensation Act of 1988, also known as the Westfall Act, modifies the Federal Tort Claims Act and sets forth the procedure under which the Attorney General may substitute the United States as a defendant in place of a federal employee. 28 U.S.C. § 2679(c)-(d); *Linder v. United States*, 937 F.3d 1087 (7th Cir. 2019). For the United States to be substituted as the proper defendant and the Federal Tort Claims Act to apply, the Attorney General must certify that the employee was acting within the scope of his employment at the time the alleged tort occurred. *Id.* Here, however, no such certification has occurred.

Howard then returned to the district court and asked it to set aside its judgment under Federal Rule of Civil Procedure Rule 60(b)(1) on grounds that his appeal was dismissed based on a "mistake." The district court denied this motion as well.

Howard now appeals again, arguing that we made a "mistake" by dismissing his prior appeal as untimely. He maintains that he filed that appeal within the 60 days afforded him because the United States was a party. *See* FED. R. APP. P. 4(a)(1)(B).

But Howard may not rely on Rule 60(b)(1) to challenge our dismissal of his prior appeal. That rule allows a district court to correct its own errors. *See Kemp v. United States*, 142 S. Ct. 1856, 1865 (2022); *Mendez v. Republic Bank*, 725 F.3d 651, 659 (7th Cir. 2013). Accordingly, the district court properly denied Howard's Rule 60 motion.

AFFIRMED