

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

---

JOHNNY JOHNSON, )  
 )  
 Plaintiff, )  
 )  
 vs. ) No. 02-2990-V  
 )  
 MIDTOWN MENTAL HEALTH CENTER, )  
 )  
 Defendant. )

---

ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT  
AND  
ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH

---

Before the court is the February 11, 2004 motion of the plaintiff, Johnny Johnson, pursuant to Rule 60(b)(1) and (2) of the Federal Rules of Civil Procedure, to relieve the plaintiff on grounds of mistake, inadvertence, surprise, excusable neglect, and newly discovered evidence from the order entered by the court on February 2, 2004, granting the defendant summary judgment and dismissing this case. For the reasons that follow, Johnson's motion is denied.

Rule 60(b)(1) permits a party to seek relief from a court order for "mistake, inadvertence, surprise, or excusable neglect." FED. R. CIV. P. 60(b)(1). Rule 60(b)(2) permits relief for newly discovered evidence. Whether to grant relief is within the discretion of the court.

Johnson has not presented any ground that would entitle him to relief. The court finds that Johnson's arguments in his Rule 60 motion are merely duplicative of his earlier arguments and therefore insufficient to warrant relief from the prior ruling. In reaching its decision to grant the defendant's motion for summary judgment, the court considered the very arguments and issues now raised again by Johnson.

Accordingly, Johnson's motion for relief from judgment is denied.

Another issue to be addressed is whether plaintiff should be allowed to appeal the court's detailed order granting the defendant summary judgment and closing the case *in forma pauperis*. Twenty-eight U.S.C. § 1915(a) (3) provides that an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.

The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The same considerations that lead the court to grant summary judgment and dismiss this case also compel the conclusion that an appeal would not be in good faith.

It is therefore CERTIFIED, pursuant to 28 U.S.C. § 1915(a) (3), that any appeal in this matter by plaintiff is not taken in good faith and plaintiff may not proceed on appeal *in forma pauperis*.

The Sixth Circuit Court of Appeals' decisions in *McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997), and *Floyed v. United States Postal Service*, 105 F.3d 274 (6th Cir. 1997), apply to any appeal filed by the plaintiff in this case.

If plaintiff files a notice of appeal, he must pay the entire \$105 filing fee required by 28 U.S.C. §§ 1913 and 1917. The entire filing fee must be paid within thirty days of the filing of the notice of appeal.

By filing a notice of appeal the plaintiff becomes liable for the full amount of the filing fee, regardless of the subsequent progress of the appeal. If the plaintiff fails to comply with the above assessment of the appellate filing fee within thirty days of the filing of the notice of appeal or the entry of this order, whichever occurred later, the district court will notify the Sixth Circuit, which will dismiss the appeal. If the appeal is dismissed, it will not be reinstated once the fee is paid. *McGore*, 114 F.3d at 610.

IT IS SO ORDERED February 17, 2004.

---

DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE