

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 6, 2022

Lyle W. Cayce
Clerk

No. 21-20281
Summary Calendar

CECIL MAX-GEORGE,

Plaintiff—Appellant,

versus

OFFICER C. A. MYRICK; OFFICER J. MEJIA;
OFFICER L. MATTHEWS; CITY OF HOUSTON,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
No. 4:17-CV-2264

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Cecil Max-George, Texas prisoner #1649987, filed a *pro se* civil rights lawsuit under 42 U.S.C. § 1983 and Texas tort law. After the district court dismissed, Max-George filed two motions to reopen the time to file an appeal

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-20281

from the dismissal and a motion per Federal Rule of Civil Procedure 60(b). The district court denied Rule 60(b) relief and dismissed the motions to reopen for want of jurisdiction because the instant appeal was pending.

Max-George's notice of appeal from the denial of his Rule 60(b) motion does not bring up the underlying judgment for appellate review. *See Bailey v. Cain*, 609 F.3d 763, 767 (5th Cir. 2010). Even if an appeal were pending from the dismissal of Max-George's § 1983 action, rulings on his motions to reopen would assist us in determining our jurisdiction to consider the dismissal. *See Ross v. Marshall*, 426 F.3d 745, 751 (5th Cir. 2005). Accordingly, the district court's September 20, 2021, order dismissing Max-George's motions to reopen for want of jurisdiction is VACATED.

We REMAND for the limited purpose of permitting the district court to determine whether the time to file an appeal from the October 28, 2020, judgment should be reopened under Federal Rule of Appellate Procedure 4(a)(6). The district court is directed to return the case to this court for further proceedings or dismissal, as appropriate, once the ruling has been made.