

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY GILLIAM,
Plaintiff,
v.
MA ELIZA CANGGAS GILLIAM, et al.,
Defendants.

No. 2:14-cv-02454-MCE-AC

FINDINGS & RECOMMENDATIONS

On November 18, 2015, the court held a hearing on plaintiff Jerry Gilliam’s motion for relief from judgment pursuant to Rule 60(b). Plaintiff appeared telephonically in pro se; Betsy Kimball appeared on behalf of defendant J. Christina Alvarez Aulakh, erroneously sued as J. Christina Alvarez Aulaki; and defendants Debbie Sue Magistrado, Marsha A. McHugh, and James Robert Gilliam failed to appear. On review of the motions, the documents filed in support and opposition, upon hearing the arguments of counsel, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

FACTUAL BACKGROUND

Plaintiff’s original complaint alleges as follows. Plaintiff and defendant Ma Eliza Canggag Gilliam (“Canggag”) were married on December 23, 2006, and had a child. ECF No. 1-2 at 4. By 2008 the couple had separated and plaintiff was paying Canggag child support. Id. At some point during 2008 Canggag moved to the Philippines with the couple’s daughter, Lou Eva.

1 Id. The couple then divorced on January 27, 2010, in Sacramento County. Id. During the
2 divorce proceedings the Sacramento Superior Court held that issues related to custody and
3 visitation of Lou Eva would be determined by a court in the Philippines, the child's home
4 country. Id. at 5. When plaintiff scheduled the matter of child custody to be heard in a Philippine
5 court in March and April of 2009, Canggih moved in order to divest the local court of personal
6 jurisdiction over her. Id. On another occasion, plaintiff secured a bench warrant for Canggih's
7 arrest for failure to appear at her child custody hearing in the Philippines. Id. at 5–6. When
8 Canggih was brought before the court, she agreed to work out some sort of custody and visitation
9 agreement with plaintiff. Id. With the court's permission, she promised to return for a hearing in
10 two weeks, presumably to finalize a custody arrangement. Id. at 6. However, Canggih never
11 appeared. Id.

12 Plaintiff now brings this lawsuit against Canggih, claiming that her persistent refusal to
13 adjudicate their child custody issues constitutes extreme and outrageous conduct that has caused
14 him severe emotional distress. Id. at 1. Plaintiff also alleges that the remaining defendants are
15 liable for assisting Canggih with her plan to prevent him from finding the whereabouts of his
16 daughter. Id. at 4. Plaintiff alleges that defendants Debbie Sue Magistrado, Marsha A. McHugh,
17 and James Robert Gilliam all know where defendant Canggih resides but have refused to tell him.
18 Id. at 6, 10. In addition, plaintiff alleges that they have regularly supplied Canggih with funds to
19 enable her to continue evading plaintiff. Id. at 6, 11. Plaintiff also alleges that defendant Aulakh
20 assisted Canggih by neglecting to inform her that hiding Lou Eva from him was a federal crime.
21 Id. Aulakh also allegedly supported Canggih by refusing to answer plaintiff's numerous email
22 requests for her location. Id. at 9. Throughout this entire period, no custody or visitation order
23 has ever been issued by any court. Id. at 10, 13. Plaintiff seeks damages for extreme emotional
24 distress and a declaratory judgment that the defendants have acted with outrageous conduct. Id.
25 at 14.

26 The complaint invokes this court's diversity jurisdiction under 28 U.S.C. § 1332, on
27 grounds that plaintiff resides in Missouri and the defendants (other than Canggih, who remains
28 unserved because her precise location in the Philippines is unknown to plaintiff) in California. Id.

1 at 3.

2 PROCEDURAL BACKGROUND

3 Plaintiff filed his original complaint in this matter on October 20, 2014. ECF No. 1. On
4 November 13, 2014, Aulakh filed an answer to plaintiff's complaint. ECF No. 4. On January 15,
5 2015, the remaining defendants (with the exception of Canggih) filed a joint answer. ECF No.
6 14. Plaintiff was and is to this day unable to serve Canggih because he does not know her
7 location. On multiple occasions plaintiff has sought the court's permission to pursue alternative
8 modes of service, for example service by publication. ECF Nos. 8, 15. The court denied
9 plaintiff's motions because he could not meet the standards for alternative service.¹ ECF Nos. 10,
10 16.

11 On February 27, 2015, the court ordered plaintiff to show cause why his complaint should
12 not be dismissed for failure to state a claim, explaining that the court is precluded from deciding
13 claims that depend upon a custody determination in the hands of the California and Philippine
14 courts. ECF No. 27. On March 10, 2015, plaintiff filed a response to the order to show cause,
15 along with a motion for leave to amend his complaint. ECF Nos. 30, 31. On April 21, 2015, the
16 court considered plaintiff's response (and numerous related filings) and recommended his case be
17 dismissed without leave to amend. ECF No. 45. The court found that while plaintiff's claims did
18 not fall within the Ankenbrandt exception to diversity jurisdiction,² abstention was appropriate
19 because his claims turned on the parental rights and custodial status of the parties. Id. at 5–6.
20 Such issues are traditionally decided by state courts and accordingly, federal courts are ill
21 prepared to decide them. Id. (citing Coats v. Woods, 819 F.2d 236, 237 (9th Cir.)). On June 1,
22 2015, the presiding district judge adopted the court's findings and recommendations in full. ECF
23 No. 49.

24 On September 8, 2015, plaintiff filed a motion for relief from judgment under Rule 60(b),
25 along with a motion for leave to amend. ECF Nos. 51, 52. On October 7, 2015, the presiding

26 ¹ Plaintiff was unable to meet the standards for alternative service in large part because he did not
27 know where Canggih was located, and therefore could not establish that actual notice was
28 reasonably likely. ECF Nos. 10, 16.

²f Ankenbrandt v. Richards, 504 U.S. 689 (1992).

1 district judge referred plaintiff's motion to the undersigned. ECF No. 56. Plaintiff then properly
2 noticed his motions before the undersigned on October 15, 2015. ECF No. 58. On November 4,
3 2015, Aulakh filed an opposition to plaintiff's motions. ECF No. 62.

4 LEGAL STANDARDS

5 Rule 60(b) provides for reconsideration of a final judgment or any order where one of
6 more of the following is shown: (1) mistake, inadvertence, surprise, or excusable neglect; (2)
7 newly discovered evidence which, with reasonable diligence, could not have been discovered
8 within twenty-eight days of entry of judgment; (3) fraud, misrepresentation, or misconduct of an
9 opposing party; (4) voiding of the judgment; (5) satisfaction of the judgment; and (6) any other
10 reason justifying relief. Fed. R. Civ. P. 60(b). A motion for reconsideration on any of these
11 grounds must be brought within a reasonable time, and no later than one year, of the entry of the
12 judgment or the order being challenged. Id.

13 DISCUSSION

14 The court will recommend that plaintiff's motion for relief from judgment be denied
15 because plaintiff satisfies none of Rule 60(b)'s requirements. Plaintiff argues that the court
16 should relieve him from judgment primarily for two reasons: (1) defendants committed fraud
17 upon the court by disingenuously arguing that his claims belong in family court; and (2) he has
18 added claims to his proposed amended complaint that cure its defects. Plaintiff's arguments are
19 unconvincing.

20 The term "fraud upon the court" is a "nebulous concept," and the Ninth Circuit has held
21 that the phrase "should be read narrowly, in the interest of preserving the finality of judgments."
22 In re Levander, 180 F.3d 1114, 1119 (9th Cir. 1999) (internal quotation marks omitted). To
23 commit fraud upon the court a party's misconduct must "'harm[] the integrity of the judicial
24 process.'" Id. (quoting Alexander v. Robertson, 882 F.2d 421, 424 (9th Cir. 1989)). Defendants'
25 argument that plaintiff's claims belong in family court does not meet this standard because it is a
26 legal argument. Legal arguments cannot be misrepresentations for the purposes of fraud

27 ///

28 ///

1 allegations.³ Life Technologies, Inc. v. Clontech Laboratories, Inc., 224 F.3d 1320, 1323, (Fed.
2 Cir. 2000) (“[I]n making the argument the inventors merely advocated a particular interpretation
3 of the teachings of the . . . article . . . which the Examiner was free to accept or reject. This
4 argument does not contain any factual assertions that could give rise to a finding of
5 misrepresentation.”); Rowe Int’l. Corp. v. Ecast Inc., 241 F.R.D. 296 (N.D. Ill. 2007) (holding
6 that fraud must relate to a misrepresentation of fact, therefore, a legal argument by a prosecuting
7 attorney that does not misstate material facts, but perhaps provides an insincere opinion, will not
8 provide a bases to invoke the crime-fraud exception).

9 Plaintiff’s argument that his proposed amended complaint cures the defects in his previous
10 complaint does not fare much better. Plaintiff argues that by including claims for “interference
11 with a contract;” negligent infliction of emotional distress; civil conspiracy; fraud; “invasion of
12 privacy of plaintiff’s right to seclusion in his private affairs;” and “outrageous conduct resulting
13 in extreme emotional distress” he has cured any and all defects in his previous complaint. ECF
14 No. 51, Plaintiff’s Motion to Reopen the Judgment at 5. The inclusion of these causes of action
15 does not affect the centrality of parental rights and a child custody determination to plaintiff’s
16 claims, and accordingly is irrelevant to their dismissal. In addition, as the court explained at the
17 hearing, plaintiff cannot meet the Rule 60(b) standard by proposing an amended complaint, *even*
18 *if* that complaint sufficiently addressed the issues that resulted in dismissal of his case.

19 Ultimately, plaintiff argues that he should be relieved from the court’s judgment because
20 the court misapplied the law. In so arguing, plaintiff primarily reprises arguments already
21 addressed in the court’s April 21, 2015, findings and recommendations. For example, plaintiff’s
22 motion points to a number of cases involving “family kidnappings,” i.e. cases where plaintiffs
23 claim relatives have acted to forcibly estrange family members. ECF No. 51, Plaintiff’s Points
24 and Authorities at 3 (citing Rosefield v. Rosefield, 221 Cal. App. 2d 431 (1963); Horowitz v.
25 Sacks, 89 Cal. App. 336 (1928); Hinton v. Hinton, 436 F.2d 211 (D.C. Cir. 1970); Kajtazi v.
26 Kajtazi, 488 F. Supp. 15 (E.D.N.Y. 1978); Pickle v. Page, 252 N.Y. 474 (1930); and Lawyer v.

27 ³ In truth, it cannot even be fairly said that defendants raised this argument, as it was primarily
28 broached *sua sponte* by the court. See ECF No. 45.

1 Fritcher, 130 N.Y. 239 (1891)).

2 In Rosefield, the California Courts of Appeal reversed and remanded a lower court's
3 dismissal of a complaint involving a father and grandfather's abduction of the father's child from
4 her mother. 221 Cal. App. 2d 431, 432–33 (1963). The parents in Rosenfield had recently
5 separated, then attempted a reconciliation, but had not divorced. Id.

6 In Horowitz v. Sacks the California Courts of Appeal reversed a verdict in favor of the
7 plaintiff, who claimed that the defendants had alienated the affections of his wife (Bessie) by
8 effectively abducting her. 89 Cal. App. 336, 339 (1928). The defendants were members of
9 Bessie's family who claimed that the *plaintiff* was, in fact, the one who abducted her at the time
10 of their engagement for the purpose of getting possession of her money. Id. Defendants stated
11 that at the time of Bessie's engagement to the plaintiff she was not of sound mind and was
12 accordingly induced by the plaintiff to engage him and leave her family. Id.

13 In Hinton v. Hinton the D.C. Circuit reversed the District Court's grant of summary
14 judgment in the defendants' favor, finding that the plaintiffs had stated a claim for relief and
15 material issues of fact remained. 436 F.2d 211, 212 (D.C. Cir. 1970) aff'd, 492 F.2d 669 (D.C.
16 Cir. 1974). The plaintiffs alleged that their minor child's grandmother was unlawfully harboring
17 him at her residence, while aiding and abetting his delinquent refusal to return home. Id. The
18 D.C. Circuit held that the plaintiffs' allegations stated a claim for the tort of harboring. Id.

19 In Kajtazi v. Kajtazi the District Court for the Eastern District of New York entered
20 judgment in plaintiff's favor for the abduction and false imprisonment of the plaintiff's child.
21 488 F. Supp. 15, 21 (E.D.N.Y. 1978). The plaintiff, the child's mother, claimed that the
22 defendants, the child's father and members of his family, abducted the child after the mother and
23 father began divorce proceedings and custody was awarded to the plaintiff. Id. at 17. In
24 explaining the law regarding false imprisonment the court specifically stated that "[t]he unlawful
25 taking or withholding of a minor child *from the custody of the parent entitled to such custody* is a
26 tort. A parent not entitled to custody has no privilege to interfere with the legal custody of the
27 child." Id. at 18 (emphasis added).

28 In Pickle v. Page the Court of Appeals of New York affirmed the judgment of the lower

1 court in plaintiff's favor based on allegations that the plaintiff's grandson was abducted by the
2 defendant, a county sheriff, who then gave him over to his mother. 252 N.Y. 474, 475–76 (1930).
3 The plaintiff alleged that both he and his wife had legally adopted their grandson after he was
4 abandoned by his mother as an infant. Id.

5 Finally, in Lawyer v. Fritcher the Court of Appeals of New York affirmed the judgment of
6 the lower court in the plaintiffs' favor. 130 N.Y. 239, 240–41 (1891). The plaintiffs had asserted
7 a cause of action for abduction and seduction of their seventeen-year-old daughter, who
8 committed suicide after being given to a sixty-year-old man (the defendant) with the expectation
9 that she marry him. Id. The plaintiffs alleged that the defendant, in a series of "interviews" prior
10 to the daughter's abduction, had claimed to be legally divorced from his ex-wife and able to
11 remarry when, in fact, he was not. Id. Based on that misrepresentation the plaintiffs alleged
12 damages based on the "loss of services" of their daughter. Id.

13 The foregoing cases do not support relief from judgment here, for a number of reasons.
14 First, none of the cited cases are controlling on this court. Moreover, none involves a fact pattern
15 like the one giving rise to the judgment here: plaintiff and his ex-wife are divorced, but no
16 custody order is in place and plaintiff's rights in relation to his daughter remain adjudicated.
17 Any claim based on the custody of plaintiff's daughter is dependent upon an as-yet-undecided
18 family law issue which is not properly before this court.

19 The court will also recommend that plaintiff's motion for leave to amend be denied
20 because, as it explained at the hearing, the court lacks jurisdiction to grant leave to amend once
21 judgment has been entered. Accordingly, the court must recommend that plaintiff's motion for
22 leave to amend be denied in light of its recommendation that his motion for relief from judgment
23 be denied.

24 In summary, the court will recommend that plaintiff's motion for relief from judgement be
25 denied because he has not shown that he meets any of Rule 60(b)'s requirements. Plaintiff's
26 arguments that defendants committed fraud upon the court and his proposal of an amended
27 complaint do not show: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
28 discovered evidence which, with reasonable diligence, could not have been discovered within

1 twenty-eight days of entry of judgment; (3) fraud, misrepresentation, or misconduct of an
2 opposing party; (4) voiding of the judgment; (5) satisfaction of the judgment; or (6) any other
3 reason justifying relief. See Fed. R. Civ. P. 60(b). What's more, the cases cited by plaintiff in his
4 motion do not, in fact, support the proposition that he is entitled to pursue his claims in this court,
5 despite his assertions to the contrary. The court will also recommend that plaintiff's motion for
6 leave to amend be denied in light of its recommendation that his motion for relief from judgment
7 be denied.

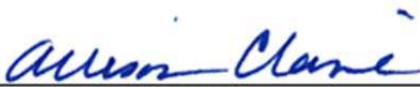
8 CONCLUSION

9 Based on the foregoing, THE COURT HEREBY RECOMMENDS that:

- 10 1. Plaintiff's motion for relief from judgement, ECF No. 51, be DENIED; and
11 2. Plaintiff's motion for leave to amend, ECF No. 52, be DENIED.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
14 days after being served with these findings and recommendations, any party may file written
15 objections with the court. The document should be captioned "Objections to Magistrate Judge's
16 Findings and Recommendations." Any reply to the objections shall be served and filed within
17 fourteen (14) days after service of the objections. The parties are advised that failure to file
18 objections within the specified time may waive the right to appeal the District Court's order.
19 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: November 23, 2015

21 
22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
24
25
26
27
28