

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

PABLO CABRERA,	)	4:05CV3121
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
DR. JANSSEN WILLIAMS and	)	
CORRECTIONAL MEDICAL	)	
SERVICES,	)	
	)	
Defendants.	)	

Judgment was entered in this case on August 21, 2008, in favor of Defendants and against Plaintiff, providing that Plaintiff’s Eighth Amendment claim was dismissed with prejudice, and Plaintiff’s state-law medical malpractice claim was dismissed without prejudice .

Plaintiff has filed a motion (filing [117](#)) to reopen this case pursuant to [Fed. R. Civ. P. 60\(b\)\(1\)](#) for the reason that the court failed to timely notify him of the entry of judgment. Plaintiff claims he was not notified of the judgment until September 28, 2008, more than 30 days after judgment was entered, and was therefore denied the opportunity to appeal. Plaintiff asserts that the Clerk of Court improperly sent the final judgment to Omaha attorney Stephanie Martinez instead of to Plaintiff himself at the prison in Tecumseh, Nebraska. “[A]fter his motion for court[-]appointed counsel was denied . . . there is no legal basis upon which this court could base any beli[e]f that attorney Martinez was his attorney of record at the time inasmuch as he had expressed to the court his inability to retain counsel because of the condition of his poverty.” (Filing [117](#).)

The docket sheet for this case indicates that attorney Stefanie A. Martinez entered her appearance as Plaintiff’s counsel on November 19, 2007. (Filing [77](#).) On

May 29, 2008, Martinez and attorney James R. Walz became Plaintiff's appointed counsel (filing [97](#)), a status they retained through entry of judgment in this case and beyond. (See Filing [114](#), Order granting Martinez's and Walz's motion for reimbursement from Federal Practice Fund dated Nov. 14, 2008.) Therefore, this court's notification of court-appointed attorneys Martinez and Walz of the final judgment in this case cannot constitute "mistake, inadvertence, surprise, or excusable neglect" within the meaning of [Fed. R. Civ. P. 60\(b\)\(1\)](#), the basis for Plaintiff's motion.

Accordingly,

IT IS ORDERED that Plaintiff's motion to reopen this case (filing [117](#)) is denied.

DATED this 9<sup>th</sup> day of September, 2009.

BY THE COURT:

*Richard G. Kopf*

United States District Judge

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