[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-12190
Non-Argument Calendar

D.C. Docket No. 9:19-cv-81373-RS

Bkcy. No. 15-bk-21654-EPK

In re: FREDERICK J. KEITEL,

Debtor.

FREDERICK J. KEITEL,

Plaintiff-Appellant,

versus

TRUSTEE RICHARD WEBBER,
ROY S. KOBERT,
STEVEN VANDERWILT,
JAMES C. MOON,
KAPILAMUKAMAL, LLP,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(April 16, 2021)

Before JILL PRYOR, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

Frederick J. Keitel, III, a bankruptcy debtor and attorney proceeding *pro se*,[1] appeals the district court's order denying Keitel's motion to reopen and reinstate his appeal in the district court filed pursuant to Federal Rule of Civil Procedure 60. Keitel had appealed an order entered during his bankruptcy proceeding to the district court, but the district court dismissed his appeal after he failed to respond to the district court's show cause order as to why the case should not be dismissed for Keitel's failure to file a timely initial brief and failure to comply with the court's prior orders. Keitel argues that the district court abused its discretion in denying his motion to reopen and reinstate his appeal because he showed excusable neglect

[1] As noted by the bankruptcy court in its 2017 contempt order, Keitel "was a successful real estate investor" who became "embroiled in disputes with certain of his partners, resulting in protracted litigation in the Florida courts." Keitel was unsuccessful in the state court litigation and ended up filing for bankruptcy under chapter 11. However, as the bankruptcy court noted, Keitel was "not a typical *pro se* debtor"; rather he was an attorney with "significant litigation experience" who, during the course of the bankruptcy proceedings, was "suspended from the practice of law by The Florida Bar." Thus, the liberal construction and leeway normally afforded to *pro se* litigants does not apply to Keitel given his formal legal training and considerable litigation experience. *See Olivares v. Martin*, 555 F.2d 1192, 1194 n.1 (5th Cir. 1977).

and that his motion should be granted in order to avoid a grave miscarriage of justice. After careful review, we affirm.

I. BACKGROUND

During the course of his bankruptcy proceedings,[2] Keitel sought leave from the bankruptcy court to file suit against the appointed trustee and several professionals retained by the trustee in connection to the bankruptcy case for malpractice, fraud, extortion, incompetence, negligence, and breach of fiduciary duty.[3] Following a hearing, the bankruptcy court denied the motion. Keitel filed a

[2] The record reflects that in June 2015, Keitel, proceeding *pro se*, filed a voluntary petition for bankruptcy under chapter 11 in the United States Bankruptcy Court for the Southern District of Florida. The bankruptcy court later converted the case into a proceeding under chapter 7 for cause and appointed a trustee. *See* 11 U.S.C. § 1112(b)(1) (providing that upon a showing of "cause" the bankruptcy court "shall convert a case under [chapter 11] to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate"); *id.* § 1112(b)(4) (defining the term "cause"). Thereafter, Keitel filed a series of motions seeking reconsideration of the order converting his case to a chapter 7 proceeding, as well as several motions seeking to disqualify the presiding bankruptcy judge. These motions contained various allegations that the bankruptcy judge, numerous attorneys, the United States Trustee, and others were involved in "case fixing" and a conspiracy against Keitel. These motions were denied. Later, in December 2017, following entry of a show cause order and an evidentiary hearing, the bankruptcy court held Keitel in contempt of court for knowingly violating orders of the Court and sanctioned him for his "scandalous serial filings." One of the sanctions imposed was the indefinite suspension of Keitel's ability to file documents electronically with the bankruptcy court through CM/ECF. The court noted that the suspension of his electronic filing privileges meant that Keitel would be served with documents via "United States Mail at the address indicated in his original petition, unless he filed a formal change of address." The bankruptcy court also referred the case to the Florida Bar for possible ethical violations and suspended Keitel from practice before the bankruptcy court for five years (with the exception that he could represent himself in any proceeding in which he was a party). The Florida Bar initiated an investigation, filed a complaint against Keitel, and Keitel was suspended by the Florida Bar in July 2018.

[3] Under the doctrine set forth in *Barton v. Barbour*, 104 U.S. 126, 127 (1881), a debtor is required to first obtain leave from the bankruptcy court before he can bring an action in either state or federal court "against the trustee or other bankruptcy-court-appointed officer, for acts

motion for reconsideration of the order, which was denied. Thereafter, Keitel filed a notice of appeal with the bankruptcy court, which the bankruptcy court dismissed as untimely. Keitel filed a motion seeking clarification of the order dismissing his appeal, arguing that under the mailbox rule his notice of appeal was timely. The bankruptcy court denied the motion.

Thereafter, asserting excusable neglect, Keitel filed a motion for an extension of time to file an appeal of (1) the order dismissing his appeal as untimely; (2) the order denying his motion for clarification of the dismissal order; and (3) the order denying his motion for reconsideration of the denial of his request for leave to file a lawsuit against the Chapter 7 trustee and others. The bankruptcy court denied the motion.[4] Keitel appealed that order to the district court.

After filing his notice of appeal with the district court, Keitel moved for an extension of time to file an initial brief. The district court granted Keitel's motion,

---

done in the actor's official capacity." *Carter v. Rodgers*, 220 F.3d 1249, 1252–53 (11th Cir. 2000).

[4] The bankruptcy court concluded that Keitel had not demonstrated excusable neglect because (1) the hurricane did not arrive until the week after the deadline and the court did not experience any disruption in the delivery of mail and was open for business on August 29, 2019—the final day of Keitel's 14-day appeal window; (2) the Labor Day holiday occurred several days after the filing deadline; (3) Keitel's scheduled surgery did not constitute excusable neglect because he had received e-mail notice of the order denying his motion for reconsideration 12 days prior to his mailing his notice of appeal two days before the deadline; (4) Keitel's suspension of his electronic filing privileges did not deny him access to the court, as he could still file documents in person or by other appropriate means; (5) Keitel's misunderstanding of the law as to the applicability of the mailbox rule did not constitute excusable neglect; and (6) Keitel's inability to find an overnight carrier or other person to file the notice in person did not constitute excusable neglect.

directed that the initial brief be filed by December 23, 2019, and provided that in the future "all filings by [Keitel] shall comply with the Local Rules of the Southern District of Florida . . . including Local Rules 7.1(a)(3) and 5.1." On December 20, 2019, Keitel filed a second motion for extension of time to file an initial brief. The district court denied the motion, noting that "[Keitel] ha[d] failed to comply with the conferral requirement of Local Rule 7.1(a)(3)."

Keitel filed a motion for reconsideration. In particular, Keitel alleged that he "was away," did not have access to the electronic filing system, and was unable to get to his P.O. box, which resulted in him never receiving a copy of the order granting his initial request for an extension of time. Instead, he called the clerk's office, which informed him that the motion was granted, but did not mention the additional language regarding the need for future filings to comply with the local rules. Therefore, Keitel asserted that he never had notice of the prior "entire order" when preparing his second motion for an extension of time, and he did not know that he had not complied with the local rules until he called the clerk's office to inquire as to the status of his second motion for an extension of time.

On April 1, 2020, the district court denied the motion for reconsideration, concluding that Keitel had not satisfied any of the grounds for granting a motion for reconsideration. The district court further noted that, to the extent that Keitel alleged he was unaware of the contents of its prior orders or the local requirements

because he could not access his mail, it was Keitel's responsibility "to ensure that a current mailing address [was] on file" with the court, and his failure to do so was not a reason for reconsideration of the court's prior order. Accordingly, the district court ordered Keitel to show cause by April 24, 2020 why the case should not be dismissed for failure to file a timely brief and failure to comply with court orders. The court cautioned that a failure to respond in a timely manner "shall result in dismissal without further notice." Keitel did not respond to the show cause order; therefore, the district court *sua sponte* dismissed the appeal.

A few weeks later, Keitel filed a motion to reopen and reinstate the case due to a lack of notice and due process, his "serious health issues," and the coronavirus pandemic and related national emergency, under Federal Rule of Civil Procedure 60. Keitel alleged that he was hospitalized in March 2020 for various surgeries and treatment related to his cancer and he did not have access to his mail or to the electronic filing system. Thus, he had no notice of the district court's April 1 show cause order. He alleged that he first learned of the show cause order when he received an e-mail notification that his case had been dismissed.

On May 15, 2020, the district court denied the motion.[5] As an initial matter, the district court noted that Keitel "consistently failed to meet [c]ourt deadlines and

[5] Meanwhile, on May 12, 2020, the bankruptcy court entered a final order closing Keitel's bankruptcy case.

ha[d] ignored [c]ourt orders." Although Keitel attributed his failures to the fact that he was out-of-town and could not access his P.O. box, the court concluded that the local rules provided that Keitel had "an obligation to maintain current contact information" with the court, and that a failure comply "shall not constitute grounds for relief from deadlines imposed by Rule or by the [c]ourt." Thus, Keitel's "failure to meet his responsibilities" did not constitute mistake, inadvertence, surprise, excusable neglect, or otherwise justify relief. Keitel appeals that order.

II. DISCUSSION

Keitel argues that he satisfied the requirements for granting relief under Federal Rule of Civil Procedure 60(b) or 60(d)(1) and that the district court abused its discretion in denying his motion to reopen or reinstate his appeal. Keitel contends that his serious health issues, the pandemic, the suspension of his ability to file documents electronically, and his resulting inability to access his mail demonstrates excusable neglect. He also contends that his motion should have been granted to avoid a grave miscarriage of justice and irreparable harm. He maintains that he never willfully ignored the district court's orders, and given his serious health issues, he should not be blamed for his inability to travel or access his mail. He notes that the district court could have e-mailed him the orders in his

case, but did not, and this situation is the result of "a perfect storm, that [he] had no control over."[6]

The appeal of a Rule 60 motion is limited to a determination of whether the district court abused its discretion in denying the motion, and "does not bring up the underlying judgment for review." *Rice v. Ford Motor Co.*, 88 F.3d 914, 918–19 (11th Cir. 1996) (quotation omitted). To show that the district court abused its discretion in denying a Rule 60 motion, the appellant "must do more than show that a grant of [his] motion might have been warranted." *Id.* The appellant "must demonstrate a justification for relief so compelling that the district court was *required* to grant [the] motion." *Id.* (emphasis in original); *see also Betty K Agencies, Ltd., v. M/V Monada*, 432 F.3d 1333, 1337 (11th Cir. 2005) ("Discretion means the district court has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law.").

Rule 60(b)(1) provides, in relevant part, that a court may relieve a party from an order of the court based on "mistake, inadvertence, surprise, or excusable neglect" or "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(1), (6).

[6] We note that Keitel discusses at length facts related to why his initial appeal in September 2019 from the bankruptcy court's order denying his motion for reconsideration of the denial of his request for permission to file suit against the trustee and others was untimely. Those facts, however, are not relevant to the May 2020 denial of the Rule 60 motion to reinstate his appeal, which is the only motion on appeal before this Court.

"[Rule] 60(b)(1) and (b)(6) are mutually exclusive. Therefore a court cannot grant relief under (b)(6) for any reason which the court could consider under (b)(1)." *Cavaliere v. Allstate Ins. Co.*, 996 F.2d 1111, 1115 (11th Cir. 1993) (quotations omitted). Further, relief under the catch-all provision of Rule 60(b)(6), "is an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances." *Id.*

Additionally, Rule 60(d)(1) provides that the court maintains the "power to . . . entertain an independent action to relieve a party from a judgment, order, or proceeding." Fed. R. Civ. P. 60(d)(1). Relief under Rule 60(d)(1) "is only available if . . . required to 'prevent a grave miscarriage of justice.'" *Aldana v. Del Monte Fresh Produce N.A., Inc.*, 741, F.3d 1349, 1359 (11th Cir. 2014) (quoting *United States v. Beggerly*, 524 U.S. 38, 46 (1998)).

Keitel has not established that the district court abused its discretion in denying his motion to reopen and reinstate his appeal. The record establishes that Keitel was aware that his electronic access to filings as an attorney had been suspended for some time and documents were being mailed to him. Clearly, he was aware also of the difficulties of accessing his mail as early as November and December 2019 because he admits that he was away from his home and did not receive copies of the district court's orders concerning his extensions of time and only learned of those orders by calling the clerk's office. Yet, he continued to file

additional motions in the district court without making any other arrangements for accessing his mail while he was away. Such conduct does not constitute excusable neglect for purposes of Rule 60(b)(1)—Keitel could have made other arrangements during the six months that his case was pending before the district court and he did not.[7] *See Aldana*, 741 F.3d at 1357–58 (explaining that under Rule 60(b), "[a] party remains under a duty to take legal steps to protect his own interests" (quoting 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2864 (3d ed. 2013)). Similarly, given the circumstances, Keitel cannot demonstrate the extraordinary circumstances necessary for relief under Rule 60(b)(6). *See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 393 (1993) ("To justify relief under [Rule 60(b)](6), a party must show 'extraordinary circumstances' suggesting that the party is faultless in the delay.").

Likewise, Keitel has failed to establish that relief is required to prevent a "grave miscarriage of justice" for purposes of Rule 60(d)(1). *Aldana*, 741 F.3d at 1359. Keitel has proffered grounds demonstrating that the district court could have granted his motion. But he has not "demonstrate[d] a justification for relief so compelling that the district court was *required* to grant [the] motion." *Rice*,

[7] Keitel, as an attorney, should be well-aware of the rules as well as the attendant risks that accompany not accessing one's mail while a legal proceeding is pending. *See, e.g.*, *Solaroll Shade & Shutter Corp. v. Bio-Energy Sys.*, 803 F.2d 1130, 1132 (11th Cir. 1986) ("[A]n attorney's negligent failure to respond to a motion does not constitute excusable neglect, even if that attorney is preoccupied with other litigation.").

88 F.3d at 919 (quotation omitted) (emphasis in original). Accordingly, we conclude that the district court did not abuse its discretion in denying Keitel's motion.

AFFIRMED.