

DLD-139

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1388

FRANK NELLOM;
TENISHA NELLOM*;
J. D. N.*; J. F. N.*

v.

ANNE MARIE AMBROSE; BARBARA A. ASH;
PHILADELPHIA DEPARTMENT OF HUMAN SERVICES;
CITY OF PHILADELPHIA LAW DEPARTMENT

Frank Nellom,
Appellant

*(Dismissed pursuant to Clerk Order dated March 10, 2023)

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:22-cv-01283)
District Judge: Honorable Joshua D. Wolson

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
May 4, 2023

Before: JORDAN, CHUNG, and SCIRICA, Circuit Judges

(Opinion filed: May 11, 2023)

OPINION*

PER CURIAM

Appellant Frank Nellom, proceeding pro se, appeals from the District Court's order denying his motion for reconsideration. We will summarily affirm.

Nellom, on behalf of himself, his daughter, and his two minor grandchildren, sued various named and unnamed City of Philadelphia employees, alleging numerous claims under state and federal law in relation to the removal of the grandchildren from their mother's custody in 2012. Dkt. No. 1 at 1-2. The defendants moved to dismiss the complaint. Dkt. No. 21. The District Court granted the motion, dismissed with prejudice the claims brought by Nellom on his own behalf, and dismissed without prejudice the claims on behalf of the other family members for failure to prosecute. Dkt. No. 27. Nellom appealed. Dkt. No. 30. This Court dismissed the appeal as to Nellom and his daughter due to lack of jurisdiction and dismissed the minor children from the appeal because no counsel entered an appearance on their behalf. C.A. No. 22-2962.

Nellom then filed a motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b)(3). Dkt. No. 37. The District Court denied the motion, and Nellom filed this timely appeal from that order only. Dkt. Nos. 38 & 39. Nellom has filed motions asking us to take summary action in his favor.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

We have jurisdiction under 28 U.S.C. § 1291. We review the District Court’s order denying the motion for reconsideration for abuse of discretion. Budget Blinds, Inc. v. White, 536 F.3d 244, 251 (3d Cir. 2008). Upon review, we will affirm because no substantial question is presented on appeal. See 3d Cir. L.A.R. 27.4.

To prevail on a Rule 60(b)(3) motion, Nellom was required to establish, by clear and convincing evidence, see Brown v. Pa. R.R. Co., 282 F.2d 522, 527 (3d Cir. 1960), “that the [defendants] engaged in fraud or other misconduct, and that this misconduct prevented [him] from fully and fairly presenting his case,” Stridiron v. Stridiron, 698 F.2d 204, 207 (3d Cir. 1983). In his Rule 60(b) motion, Nellom argued that he was entitled to relief from the District Court’s judgment because the defendants stated that his grandchildren were placed in protective custody in 2011, not 2012, and the District Court repeated that statement in its opinion. Dkt. No. 37 at 1. As the District Court correctly explained, there was no indication that the defendants knowingly misrepresented the year, especially given that Nellom’s own complaint repeatedly referenced events in 2011. See Dkt. No. 1 at 3 & 7. The District Court also properly concluded that relief from judgment was not warranted because the misstatement that the grandchildren were removed in 2011 was not material to the judgment.¹ See Bandai Am. Inc. v. Bally

¹ To the extent Nellom’s motion for reconsideration and this appeal were based on mere dissatisfaction with the District Court’s judgment, he is not entitled to relief under Rule 60(b). See Smith v. Evans, 853 F.2d 155, 158 (3d Cir. 1988) (“[A] Rule 60(b) motion may not be used as a substitute for appeal and . . . legal error, without more, cannot justify granting a Rule 60(b) motion.”), overruled on other grounds by Lizardo v. United States, 619 F.3d 273, 276-77 (3d Cir. 2010)

Midway Mfg. Co., 775 F.2d 70, 73 (3d Cir. 1985) (affirming the denial of a Rule 60(b) motion where the alleged misrepresentations were not “material to the outcome of the litigation”).

Accordingly, we will affirm the judgment of the District Court.²

² Nellom’s motions for summary action in his favor are denied.