

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-1828

MICHAEL J. MORRISSEY; THE ESTATE OF DOROTHY L.
MORRISSEY BY: MICHAEL J. MORRISSEY, Its
Administrator,

Plaintiffs - Appellants,

versus

ROBERT LESNIAK; ASHLAND CONVALESCENT CENTER;
GEORGE F. TIDEY; HANOVER COUNTY ADULT
PROTECTIVE SERVICES; HANOVER COUNTY; UNKNOWN
STAFF MEMBERS; ADMINISTRATOR, Ashland
Convalescent Center; PATRICIA GERSHENOFF;
SALLY MOON; GEORGE ELMORE; JOSEPH RAPASARDO;
HENRICO COUNTY; L. A. HARRIS; BON SECOURS,
INCORPORATED, t/a St. Mary's Hospital; CARRIE
WEST; TERRY BETINO; JEAN TODD; ELIZABETH
OXENHAM; S. J. SEIDLITZ; C. A. WOOD; SHERYL L.
HERNDON; ANN HONEYCUTT; HOWARD C. VICK;
MICHAEL ROBERTSON; COMMONWEALTH OF VIRGINIA;
VIRGINIA DEPARTMENT OF AGING; TERRY RAINEY;
VIRGINIA DEPARTMENT OF HEALTH; ANNE PETERSON;
VIRGINIA CENTER FOR QUALITY HEALTH CARE;
VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES; HENRICO COUNTY DEPARTMENT OF SOCIAL
SERVICES; HENRICO COUNTY DEPARTMENT OF MENTAL
HEALTH; MARTHA CALLOWAY; RICHARD GLOVER;
CYNTHIA WOOD; JAMES L. GILMORE; HARRY CARRICO,
Virginia Supreme Court Participating Member as
of September 1997; RICHARD H. POFF, Virginia
Supreme Court Participating Member as of
September 1997; CAROLYN WHITE; CAPITOL AREA
AGENCY ON AGING; SHAWN MAJETTE; PAUL IZZO;
OFFICE OF THE ATTORNEY GENERAL; RICHARD
ALDERMAN; JAMES MOORE; JOSEPH RAPPASADA;
HEALTH OF VIRGINIA, INCORPORATED, t/a
University Park Nursing Home; PATRICIA L.
JONES; WILLIAM BIGGERS; C. BEATTY; VICTORIA

GUTMAKER; SUSAN A. CLIFTON; MARY ANN PROFFITT;
AL HARRIS; GREER JACKSON; L. NEIL STEVERSON;
EDWIN BISCHOFF; R. R. BROOKS; REBECCA ANDREWS;
MICHELLE GAVIN, a/k/a Assistant Student; GAYLE
CLENDEIN; PETER BOLING; MEDICAL COLLEGE OF
VIRGINIA; VIRGINIA COMMONWEALTH UNIVERSITY;
UNKNOWN DOCTOR; MCV PHYSICIANS, a/k/a MCV
Associated Physicians,

Defendants - Appellees.

REED SMITH LLP,

Movant.

No. 06-2016

MICHAEL J. MORRISSEY; THE ESTATE OF DOROTHY L.
MORRISSEY BY: MICHAEL J. MORRISSEY, Its
Administrator,

Plaintiffs - Appellants,

versus

ROBERT LESNIAK; ASHLAND CONVALESCENT CENTER;
GEORGE F. TIDEY; HANOVER COUNTY ADULT
PROTECTIVE SERVICES; HANOVER COUNTY; UNKNOWN
STAFF MEMBERS; ADMINISTRATOR, Ashland
Convalescent Center; PATRICIA GERSHENOFF;
SALLY MOON; GEORGE ELMORE; JOSEPH RAPASARDO;
HENRICO COUNTY; L. A. HARRIS; BON SECOURS,
INCORPORATED, t/a St. Mary's Hospital; CARRIE
WEST; TERRY BETINO; JEAN TODD; ELIZABETH
OXENHAM; S. J. SEIDLITZ; C. A. WOOD; SHERYL L.
HERNDON; ANN HONEYCUTT; HOWARD C. VICK;
MICHAEL ROBERTSON; COMMONWEALTH OF VIRGINIA;
VIRGINIA DEPARTMENT OF AGING; TERRY RAINEY;
VIRGINIA DEPARTMENT OF HEALTH; ANNE PETERSON;
VIRGINIA CENTER FOR QUALITY HEALTH CARE;
VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE

SERVICES; HENRICO COUNTY DEPARTMENT OF SOCIAL SERVICES; HENRICO COUNTY DEPARTMENT OF MENTAL HEALTH; MARTHA CALLOWAY; RICHARD GLOVER; CYNTHIA WOOD; JAMES L. GILMORE; HARRY CARRICO, Virginia Supreme Court Participating Member as of September 1997; RICHARD H. POFF, Virginia Supreme Court Participating Member as of September 1997; CAROLYN WHITE; CAPITOL AREA AGENCY ON AGING; SHAWN MAJETTE; PAUL IZZO; OFFICE OF THE ATTORNEY GENERAL; RICHARD ALDERMAN; JAMES MOORE; JOSEPH RAPPASADA; HEALTH OF VIRGINIA, INCORPORATED, t/a University Park Nursing Home; PATRICIA L. JONES; WILLIAM BIGGERS; C. BEATTY; VICTORIA GUTMAKER; SUSAN A. CLIFTON; MARY ANN PROFFITT; AL HARRIS; GREER JACKSON; L. NEIL STEVERSON; EDWIN BISCHOFF; R. R. BROOKS; REBECCA ANDREWS; MICHELLE GAVIN, a/k/a Assistant Student; GAYLE CLENDENIN; PETER BOLING; MEDICAL COLLEGE OF VIRGINIA; VIRGINIA COMMONWEALTH UNIVERSITY; UNKNOWN DOCTOR; MCV PHYSICIANS, a/k/a MCV Associated Physicians,

Defendants - Appellees.

REED SMITH LLP,

Movant.

Appeals from the United States District Court for the Eastern District of Virginia, at Richmond. Leonard D. Wexler, Senior District Judge, sitting by designation. (3:06-cv-00034-LDW)

Submitted: December 8, 2006

Decided: January 9, 2007

Before WILKINSON and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

No. 06-1828 dismissed; No. 06-2016 affirmed by unpublished per curiam opinion.

Michael J. Morrissey, Appellant Pro Se. William Fisher Etherington, Leslie Ann Winneberger, BEALE, BALFOUR, DAVIDSON & ETHERINGTON, PC, Richmond, Virginia; Robert A. Dybing, THOMPSON & MCMULLAN, Richmond, Virginia; Paul Kugelman, Jr., OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia; Jeremy David Capps, David Patrick Corrigan, HARMAN, CLAYTON, CORRIGAN & WELLMAN, Richmond, Virginia; Rodney Kyle Adams, Darren Thomas Marting, LECLAIR RYAN, PC, Richmond, Virginia; Richard Samuel Samet, GOODMAN, ALLEN & FILETTI, Glen Allen, Virginia; Robert Jacques Kloeti, FLORANCE, GORDON & BROWN, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated appeals, Michael J. Morrissey and the Estate of Dorothy L. Morrissey seek to appeal the district court's orders dismissing their civil actions and denying their motion for reconsideration.

In No. 06-1828, we dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed. Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5), or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)). The district court's order dismissing the civil actions was entered on the docket on June 7, 2006. The notice of appeal was filed on July 14, 2006. Because Morrissey failed to file a timely notice of appeal or obtain an extension or reopening of the appeal period, we dismiss the appeal in No. 06-1828.

In No. 06-2016, Morrissey appeals from the district court's order denying his motion for reconsideration. Because he filed the motion outside of the ten-day window required for a Fed. R. Civ. P. 59(e) motion, it is treated as a Fed. R. Civ. P. 60(b) motion. See In re Burnley, 988 F.2d 1, 2-3 (4th Cir. 1993). A

motion for reconsideration under Rule 60(b) does not bring up for review the merits of the underlying substantive judgment, nor does it toll the period for filing an appeal of the underlying judgment. Browder, 434 U.S. at 263 n.7. This court reviews the denial of a motion for relief from judgment pursuant to Rule 60(b) for an abuse of discretion. Heyman v. M.L. Mktg. Co., 116 F.3d 91, 94 (4th Cir. 1997). We have reviewed the record and conclude that the district court did not abuse its discretion in denying the motion for reconsideration, as Morrissey failed to demonstrate any grounds that would entitle him to relief pursuant to Rule 60(b). Accordingly, we affirm the district court's denial of the motion for reconsideration in No. 06-2016.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 06-1828 DISMISSED
No. 06-2016 AFFIRMED