

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1569

PHYLLIS STREET,

Plaintiff - Appellant,

versus

VERIZON SOUTH, INCORPORATED,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:04-cv-01400-CMH)

Submitted: November 16, 2007

Decided: December 14, 2007

Before NIEMEYER, MICHAEL, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Phyllis Street, Appellant Pro Se. Jonathan P. Harmon, Robyn Suzanne Gray, MCGUIREWOODS, LLP, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Phyllis Street appeals the district court's order denying relief on her motion for reconsideration. If a motion for reconsideration is filed outside of the ten-day window required for a Fed. R. Civ. P. 59(e) motion, it should be treated as a Fed. R. Civ. P. 60(b) motion. See In re Burnley, 988 F.2d 1, 2-3 (4th Cir. 1992). 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 v. Dir., Dep't of Corr., 434 U.S. 257, 263 n.7 (1978). We review the denial of a Rule 60(b) motion for abuse of discretion. See United States v. Holland, 214 F.3d 523, 527 (4th Cir. 2000).

Street's motion, filed more than fifteen months after final judgment, was grounded in allegations of mistake and misrepresentation. A Rule 60(b) motion on those grounds shall be made within a reasonable time and not more than one year after judgment was entered. See Fed. R. Civ. P. 60(b)(1), (3). We therefore find Street's motion was untimely, and we affirm the district court's denial of the motion. See Street v. Verizon South, Inc., No. 1:04-cv-01400 (E.D. Va. filed May 10, 2007; entered May 15, 2007).* We dispense with oral argument because the

*We note that Street did not timely appeal the district court's orders entered on December 20, 2005, and January 23, 2006, so those orders are not before us to review.

facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED