

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-1344

HERSHEL L. BERRY; DONNA S. BERRY,

Plaintiffs - Appellants,

v.

KIMBERLY SECURITIES, INCORPORATED, a Pennsylvania
corporation with its principal place of business in New
York; KIMBERLY JEAN CARRELLA, a/k/a Kimberly Jean Misaraca;
SHANE ANDERSON CHAMBERS,

Defendants - Appellees.

Appeal from the United States District Court for the Southern
District of West Virginia, at Charleston. David A. Faber,
District Judge. (2:03-cv-00157)

Submitted: December 23, 2008

Decided: January 27, 2009

Before GREGORY, DUNCAN, and AGEE, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Joshua I. Barrett, Sean P. McGinley, Heather M. Langeland,
DITRAPANO, BARRETT & DIPIERO, PLLC, Charleston, West Virginia,
for Appellants.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Hershel L. Berry and Donna S. Berry appeal the district court's orders denying their motion to reopen and to amend the complaint and for reconsideration. Although the district court's reliance on Fed. R. Civ. P. 60(b)(2) was misplaced, we conclude that the denial of relief was not an abuse of discretion in light of the Berrys' excessive delay in seeking to amend the complaint and the absence of a valid reason for such delay. See Laber v. Harvey, 438 F.3d 404, 426 (4th Cir. 2006) (stating standard of review for denial of motion to amend complaint); Smith v. EMC Corp., 393 F.3d 590, 595 (5th Cir. 2004) ("[A]t some point, time delay on the part of a plaintiff [seeking to amend a complaint] can be procedurally fatal."). Accordingly, we affirm. 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.

AFFIRMED