NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted September 11, 2023*
Decided September 12, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-3105

JAMES STEWART,
Plaintiff-Appellant,

v.

FIRST AMERICAN TITLE INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 18-cv-7584

Mary M. Rowland,
Judge.

O R D E R

James Stewart sued his title insurance company, alleging consumer fraud and breach of contract. The district court dismissed his complaint in early 2021 for failure to state a claim. A year later, after the court had already denied a motion to reconsider, Stewart filed the series of post-judgment motions that are the subject of this appeal.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Because the district court did not abuse its discretion in declining Stewart's requests to reopen the case, we affirm the denial of those motions.

Stewart's claims center on the two times he bought title insurance from First American Title Insurance Company. He first did so in 2007 when he initially purchased his home. The bank financing that purchase sold Stewart's note to the Federal Home Loan Mortgage Corporation (Freddie Mac) and then collapsed the following year. Most of the bank's assets were sold to JP Morgan Chase Bank. Stewart again bought title insurance from First American in 2011, when according to him, Chase deceived him into refinancing so it could obtain a clear security interest in his home because ownership of his original note had become murky between the collapse of his bank and Freddie Mac's conservatorship. Stewart made mortgage payments to Chase for several years, but eventually stopped. After unsuccessfully attempting to collect the payments, Chase began foreclosure proceedings. Those proceedings apparently did not result in Stewart losing title in, or possession of his home.

In 2018, Stewart filed this suit against several defendants for their roles in the 2011 refinancing and the foreclosure proceedings. In his operative third amended complaint, Stewart attempted to assert two claims against First American. First, he alleged that First American breached its contract when it denied a title-insurance claim in 2019. The contract insured against "loss or damage" resulting from clouds on title. Stewart had purchased the home from an estate, but later learned that the deceased had placed the home in trust before he died, meaning that the estate had not legally owned it, as First American had mistakenly determined in its title search. Second, he alleged that First American had deceived him into purchasing title insurance that he did not need for his second refinancing, in violation of the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/10a, by failing to disclose that Freddie Mac (rather than Chase) owned his original note.

First American moved to dismiss both counts for failure to state a claim, *see* FED. R. CIV. P. 12(b)(6), and the district court granted the motion in July 2021. Regarding the breach of contract, the court concluded that Stewart had not adequately pleaded any loss or damage from the potential cloud on his title: He had not alleged that the trust or its beneficiaries had asserted ownership over his home, so any loss or damage resulting from the mistaken title search was speculative. The court also determined that Stewart's consumer-fraud claim was barred by the three-year statute of limitations because he had purchased the insurance in 2011 and did not sue until 2018. Stewart did not appeal.

Instead, he timely moved for reconsideration, *see* FED R. CIV. P. 59(e), but the court denied the motion in February 2022, rejecting Stewart's breach-of-contract theory again. He also argued that the court had erred in deeming his consumer-fraud claim untimely, but the court concluded that, in any event, he had failed to state a claim because he had not plausibly alleged, as required by the statute, that First American intended for him to rely on any representation of the note's ownership or that any misrepresentation caused him economic injury, and the court was not inclined to give him another attempt to amend his complaint. Again, Stewart did not appeal.

He instead filed four identical post-judgment motions and tendered a proposed fourth amended complaint. Stewart now contended that the contract did not define "loss or damage," so a jury should decide whether those ambiguous terms included his situation. He otherwise argued that he should have received an opportunity to amend his consumer-fraud claim because he was not made aware of the other deficiencies until the court ruled on his motion to reconsider.

In October 2022, the court denied these motions too, concluding that Stewart could not raise his argument concerning the supposed ambiguity of "loss or damage" for the first time in a post-judgment motion, and further amendments would be futile because the proposed fourth amended complaint still failed to plead any injury for his consumer-fraud claim. Within thirty days of this order, Stewart moved for an extension of time to file a notice of appeal. The district court granted the motion, and Stewart filed his notice of appeal before the extended deadline.

A panel of this court previously concluded that our jurisdiction over this appeal is limited to the October 2022 order denying Stewart's four identical post-judgment motions. Stewart nominally agrees with this conclusion in his brief, but First American asks us to dismiss the entire appeal for lack of jurisdiction. It argues that the district court had no authority to extend the time to appeal because Stewart moved for the extension more than 30 days after the judgment became final in February 2022.

First American's argument misunderstands the posture of the case. It is correct that a district court may grant an extension of time to file a notice of appeal only "upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal." 28 U.S.C. § 2107(c); *see also* FED. R. APP. P. 4(a)(5)(A). But the time to appeal is not always calculated from the judgment; rather, it is counted from the "judgment, order *or* decree" that is subject to appeal. 28 U.S.C. § 2107(a) (emphasis added); *accord* FED. R. APP. P. 4(a)(1)(A) ("judgment or order"). At this point Stewart

purports to be appealing not the judgment, but only the order denying his post-judgment motions, which were substantively motions under Rule 60(b) of the Federal Rules of Civil Procedure because they were filed more than 28 days after judgment was entered. *See Banks v. Chi. Bd. of Educ.*, 750 F.3d 663, 666–67 (7th Cir. 2014). The district court recognized that the denial of these Rule 60(b) motions was a final appealable order separate from the judgment, *see Prince v. Stewart*, 580 F.3d 571, 573 (7th Cir. 2009), and granted Stewart an extension within 30 days of its entry of the order, and he then complied with its deadline. Like the prior panel, then, we conclude we have jurisdiction to review the October 2022 order, even if we lack jurisdiction over the underlying judgment because Stewart's successive post-judgment motions did not suspend its finality. *See York Grp., Inc. v. Wuxi Taihu Tractor Co.*, 632 F.3d 399, 401 (7th Cir. 2011).

Still, despite acknowledging this limit on our jurisdiction, Stewart asks us to review the initial dismissal de novo. A belated motion for relief from the judgment is not a substitute for a timely appeal, and errors of law or fact do not generally warrant, let alone require, that a district court grant relief under Rule 60(b). *Banks*, 750 F.3d at 667. So, although we would have reviewed the original dismissal de novo, had Stewart appealed then, we review the denial of the post-judgment motions now only for an abuse of discretion. *See Rock Hemp Corp. v. Dunn*, 51 F.4th 693, 705 (7th Cir. 2022).

We see no abuse of discretion here. Regarding the appealed order, Stewart disputes the district court's conclusion that it was too late to raise his argument concerning the ambiguity of "loss or damage." But a post-judgment motion is not a vehicle for raising new arguments that were available before judgment. *See Word Seed Church v. Village of Homewood*, 43 F.4th 688, 691 (7th Cir. 2022). Stewart made no mention of this supposed ambiguity in his response to the motion to dismiss, and the district court was not obligated to let him raise the issue for the first time after judgment.

With respect to his consumer-fraud claim, Stewart almost exclusively challenges the district court's initial dismissal order. To the extent he addresses the denial of his post-judgment motions, we understand him to argue that the district court erred in maintaining its previous decision to deny him an opportunity to amend after the judgment. An asserted error of law like this can be a basis for relief under Rule 60(b)(1), *see Kemp v. United States*, 142 S. Ct. 1856, 1861–62 (2022), but it would not *compel* relief, *see Banks*, 750 F.3d at 667. This is an argument that could have been raised on an appeal from the judgment, and the district court did not abuse its wide discretion in rejecting this attempt to circumvent appellate deadlines. *See Gleash v. Yuswak*, 308 F.3d 758, 761 (7th Cir. 2002). In any event, the link Stewart is trying to draw between the

misrepresented ownership of his original note and the title insurance he purchased for his refinancing remains tenuous even now. The court reasonably concluded that further amendments would not help Stewart state a claim upon which relief could be granted.

AFFIRMED