

United States Court of Appeals
For the Eighth Circuit

No. 13-2814

Loren W. May, Sr.

Plaintiff - Appellant

v.

United States of America; T. C. Outlaw, Warden, FCI - Forrest City; Ronald Smith, Safety Manager, FCI-Forrest City; Geraldo Maldonado, Jr.; Harrell Watts; Does

Defendants - Appellees

Appeal from United States District Court
for the Eastern District of Arkansas - Helena

Submitted: January 24, 2014

Filed: January 29, 2014

[Unpublished]

Before BENTON, BOWMAN, and SHEPHERD, Circuit Judges.

PER CURIAM.

Loren May appeals the district court's¹ denial of his Federal Rule of Civil Procedure 60(b) motion seeking to set aside the judgment in his underlying civil action. May's post-judgment motion was based on purported newly discovered evidence, which he claimed defendants had fraudulently prevented him from accessing. See Fed. R. Civ. P. 60(b)(2) (relief from final judgment may be based on newly discovered evidence), (3) (relief from final judgment based on, inter alia, fraud or misconduct by opposing party). Upon careful review, we conclude that the district court did not commit a clear abuse of discretion in denying May's motion. See Jones v. Swanson, 512 F.3d 1045, 1048 (8th Cir. 2008) (standard of review). More specifically, we conclude (1) that May's proffered evidence was merely cumulative and would not have produced a different result, see Schwieger v. Farm Bureau Ins. Co. of Neb., 207 F.3d 480, 487 (8th Cir. 2000) (to prevail on newly-discovered-evidence claim under Rule 60(b)(2), movant must establish that evidence is material and not merely cumulative, and that evidence would likely produce different result), and (2) that May failed to show by clear and convincing evidence any misconduct by defendants, see Cook v. City of Bella Villa, 582 F.3d 840, 855 (8th Cir. 2009) (Rule 60(b)(3) movant must show by clear and convincing evidence that defendants engaged in fraud or other misconduct that prevented him from fully and fairly presenting his case).

Accordingly, we affirm. See 8th Cir. R. 47B. We also deny May's pending motion filed in this court.

¹The Honorable Jerome T. Kearney, United States Magistrate Judge for the Eastern District of Arkansas, to whom the case was referred for final disposition by consent of the parties pursuant to 28 U.S.C. § 636(c).