

**THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**CAZ KENNEDY,
ADC #127322**

PLAINTIFF

V.

Case No. 4:07-CV-00795 SWW-BD

JOHN BYUS, et al.

DEFENDANTS

ORDER

By order entered January 5, 2009, the Court adopted the recommended disposition issued by United States Magistrate Judge Beth Deere, recommending that the Court grant Defendants' motion for summary judgment and dismiss Plaintiff's claims with prejudice. In the same order, the Court denied Plaintiff's motion for voluntary dismissal, noting that where a defendant has "already won its case" voluntary dismissal without prejudice is precluded. *See Kern v. TXO Production Corp.*, 738 F.2d 968, 970 (8th Cir. 1984).

On January 23, 2009, Plaintiff filed a motion to set aside the judgment, which the Court construed as a motion for relief from judgment under Fed. R. Civ. P. 60(b). In support of his motion, Plaintiff argued that the Court erred in denying his motion for voluntary dismissal. Finding no merit to Plaintiff's argument, by order entered February 12, 2009, the Court denied Plaintiff's motion for reconsideration.

On May 8, 2009, Plaintiff filed a "Motion for Rule 60 Relief." The Court inadvertently failed to discover Plaintiff's second post-judgment motion, and on August 10, 2009, Plaintiff filed a motion for a determination and ruling. After careful consideration, the Court finds no

basis for reconsideration or alteration of the judgment in this case.

IT IS THEREFORE ORDERED that Plaintiff's "Motion for Rule 60 Relief" (docket entry #100) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's motion for a determination and ruling (docket entry #102) is MOOT.

IT IS SO ORDERED THIS 14TH DAY OF AUGUST, 2009

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE