

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE ANTONIO RODRIGUEZ,

Plaintiff,

No. 2:10-cv-1361 GEB JFM (PC)

vs.

T. MORRISON,

Defendant.

ORDER

_____ /

This matter was closed on December 13, 2010 after the undersigned adopted Magistrate Judge John F. Moulds’s October 18, 2010 findings and recommendations recommending that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(b). On May 18, 2011, plaintiff filed a motion to reopen this case. The court construes plaintiff’s motion as a motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b).

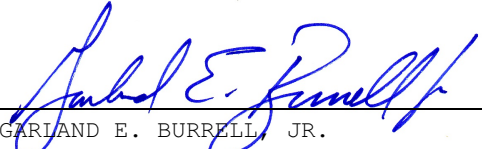
Under this rule, a party may obtain relief from judgment or an order due to clerical mistakes or because of mistake, inadvertence, excusable neglect, fraud or newly discovered evidence. Motions to reconsider are generally left to the discretion of the trial court. See Combs v. Nick Garin Trucking, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. See Kern–Tulare Water Dist. v. City of Bakersfield, 634 F. Supp.

1 656, 665 (E.D. Cal .1986), aff'd in part and rev'd in part on other grounds 828 F.2d 514 (9th Cir.
2 1987).

3 Plaintiff avers that he was unable to prosecute this action because he was
4 attending to child custody matters in Los Angeles, CA in August 2010.¹ The court does not find
5 this explanation sufficient to warrant reopening this case. On August 10, 2010, Judge Moulds
6 found that plaintiff stated a claim against defendant T. Morrison and directed plaintiff to file
7 certain documents within thirty days of the date of that order. Plaintiff did not submit any
8 documents and did not respond in any way to the order. Thereafter, on October 18, 2010, Judge
9 Moulds issued findings and recommendations recommending that the matter be dismissed.
10 Plaintiff failed to file objections to the recommendation. On December 13, 2010, the
11 undersigned adopted the findings and recommendations and this case was closed. Upon
12 consideration of this procedural history and assuming that plaintiff was indeed unavailable
13 during the entire month of August 2010, plaintiff does not explain why he was unable to
14 prosecute this matter in September, October or November 2010.

15 Accordingly, IT IS HEREBY ORDERED that plaintiff's May 18, 2011 motion to
16 reopen is denied.

17 Dated: July 14, 2011

18
19 
20 GARLAND E. BURRELL, JR.
United States District Judge

21
22
23
24
25 _____
26 ¹ Also in his motion, plaintiff discusses at length circumstances concerning his parole
status and a restraining order that he contends has been vacated. The court is unable to discern
the nature and relevance of these allegations.