

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 CATHERINE BRYAN,
12 Plaintiff,
13 v.
14 CITY OF CARLSBAD, et al.,
15 Defendant.
16

Case No.: 17cv697-LAB (BLM)

**ORDER DENYING LEAVE TO
FILE MOTION TO VACATE
JUDGMENT**

17 The Court issued a final judgment in this case on May 4, noting that Plaintiff
18 Catherine Bryan had failed to seek leave to amend as ordered. On May 29, Bryan
19 obtained a hearing date for a motion under Fed. R. Civ. P. 60. At that time, she
20 was reminded to review the Court's standing order in civil cases. She then
21 submitted a motion which describes itself as a Rule 60 motion, but which in fact is
22 something else.

23 In an earlier case, 10cv1605-CAB (KSC), *Kokopelli Community Workshop*
24 *Corp. v. Select Portfolio Servicing, Inc.* (filed Aug. 2, 2010), Judge Cathy
25 Bencivengo granted summary judgment finding, among other things, that Bryan
26 was not the owner of the house that she lives in. (See Docket no. 308 in that case,
27 at 7:12–23 (holding that Bryan transferred her interest in the subject property and
28 therefore lacked standing to contest disclosure).) Bryan took an appeal, and the

1 Ninth Circuit affirmed Judge Bencivengo's determination. *Bryan v. Select Portfolio*
2 *Servicing, Inc.*, 697 Fed. Appx. 561 (9th Cir. 2017). The mandate was spread, and
3 the judgment in that other case is now final.

4 While this present case was pending, Bryan attempted to appeal the final
5 judgment in case 10cv1605, by filing an *ex parte* motion for relief from judgment.
6 (See Docket no. 50.) The Court denied that motion, noting that in this situation,
7 the Court has no authority to vacate final judgment entered by another judge in a
8 different case, and that any motion to vacate the judgment in case 10cv1605 would
9 have to be filed in that case, not this one. (See Docket no. 51 at 1:17–25.)

10 After denying Bryan's attempted collateral attack on the judgment in case
11 10cv1605, the Court ordered Bryan to obey earlier orders requiring that she file an
12 amended complaint. (See Docket no. 51 at 2:1–5.) She did not seek leave to
13 amend, and the Court dismissed the case. Bryan's earlier claims had been
14 dismissed with prejudice, and the only claim remaining pertained to a search of the
15 subject property on March 29, 2017. But because she was not prepared to go
16 forward with that claim (which forms no part of her present motion), the Court
17 dismissed it. Because no pending claims remained, the Court dismissed the entire
18 case on May 4. (See Docket no. 53.)

19 Bryan has now filed what she calls a motion for relief from final judgment,
20 but her motion is improper in several different ways. The motion cites Rule
21 60(b)(2)–(4), claiming that the judgment in case 10cv1605 was procured by fraud
22 and is therefore void, and that she did not discover the evidence of this until
23 recently. In fact, alleged fraud by MTGLQ Investors L.P. (a party in that case but
24 not this one) is the sole basis for the motion. Fraud does not render a judgment
25 void. See *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 612 (9th Cir. 2016)
26 (judgments are only void when there is a total want of jurisdiction). The motion
27 does not identify any new evidence — only an email from a Florida fraud examiner

28 ///

1 tentatively suggesting that Bryan and her mother may have defrauded, and
2 advising her to seek relief from a court.

3 First, Bryan's motion is aimed entirely at the judgment in case 10cv1605.
4 Other than arguing that this Court should not recognize that judgment as final, she
5 does not argue that this Court made any errors in this case. Nor is she alleging
6 that the judgment in this case was procured by fraud. See *Williams v. Bentley*
7 *Motors, Inc.*, 2014 WL 12622271 at *1 (C.D. Cal. Oct. 3, 2014) (citing *In re MV*
8 *Peacock on Complaint of Edwards*, 809 F.2d 1403, 1404–05 (9th Cir. 1987))
9 (holding that Rule 60(b)(3) does not authorize relief from judgment on the basis of
10 alleged fraud in a different case).

11 A motion seeking to vacate the judgment in case 10cv1605 must be filed in
12 that case, not this one.¹ There is no provision of law that would authorize the
13 undersigned judge to reassign Judge Bencivengo's case to himself; interfere in
14 that case; or review, vacate, or declare void her judgment in that case — much
15 less the Ninth Circuit's decision affirming it. Even though Bryan was told that any
16 Rule 60 motion to vacate the judgment in case 10cv1605 had to be filed in that
17 case, she has not done so. See *Hill v. Dozer*, 2018 WL 1418412 at *3 (E.D. Cal.,
18 Mar. 22, 2018) (citing *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986) and *Chicot*
19 *Cty. Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 378 (1940)) (holding that
20 where a plaintiff could have, but did not, take action to set aside judgment in
21 another case, permitting collateral attack was inappropriate).

22 ///

23
24
25 ¹ Under some circumstances, a party may bring an independent action to set
26 aside a judgment. *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002). An
27 independent action may be appropriate where, for example, the plaintiff was not
28 a party to the case where the judgment was entered that she is seeking to set
aside. But Bryan was a Defendant in case 10cv1605. It is not clear why she did
not file a Rule 60 motion in that case.

1 Furthermore, although the local rules and the Court's standing order have
2 been pointed out to Bryan, her motion violates several requirements designed to
3 curb abusive litigation. This issue was already addressed and decided, and this is
4 Bryan's second motion for reconsideration of the same issue.

5 Under Civil Local Rule 7.1(i)(1), Bryan was required to point out to the Court
6 that she was seeking reconsideration of the Court's earlier order, and to provide
7 certain details. She has not complied with this requirement. In particular, she never
8 explained what new or different facts she now knows that she did not know before,
9 leaving it up to the Court and opposing counsel to spend their time trying to figure
10 out how this motion differed from her earlier motion. Because Bryan is seeking
11 reconsideration of the Court's order issued April 25, 2018, under Civil Local Rule
12 7.1(i)(2) her motion for reconsideration should have been filed within 28 days of
13 that order, and it is untimely.

14 Finally, the chambers' own standing order, ¶ 4(j), forbids filing motions for
15 reconsideration without leave from the Court.² The standing order required Bryan
16 to file an *ex parte* motion for leave to seek reconsideration, providing a brief
17 statement of the reasons reconsideration is being sought (not to exceed five
18 pages), and attaching her motion for reconsideration as an exhibit.

19 The Civil Local Rules and chambers standing order requirements are not
20 empty, arbitrary, or make-work formalities. Rather, they are intended to curb
21 abusive litigation practices, such as unfair delays caused by seeking
22 reconsideration late in the game, or imposing on the Court and opposing counsel
23 the burden of sifting through voluminous motions to try to figure out what new facts
24

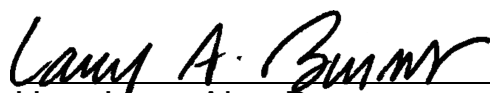
25
26 ² Obtaining a hearing date for the motion, while required under local rules, is not
27 the same as obtaining leave to seek reconsideration. The first time the Court was
28 on notice that Bryan's purported Rule 60 motion was in fact seeking
reconsideration of the Court's earlier order denying her request to vacate Judge
Bencivengo's judgment was when Bryan submitted it for filing.

1 or arguments a motion for reconsideration relies on. Even though Bryan has been
2 advised about these requirements before, and reminded to comply with them (see
3 Docket no. 38 at 18:7–9; Docket no. 43 at 2:20–21; Docket no. 48 at 2:3–5), she
4 has persisted in disobeying them. Bryan’s latest motion is untimely and is over 50
5 pages long, and would impose an unfair burden on opposing counsel and the
6 Court.

7 Because Bryan’s motion violates rules and orders she has been told about
8 and reminded to obey, it is **REJECTED FOR FILING**. Even if it were not being
9 rejected, however, it would be denied as both procedurally and substantively
10 improper. If Bryan wishes to file a proper Rule 60 motion that does not seek
11 reconsideration of this same issue, she may do so no later than **Monday, June 4,**
12 **2018**, using the same hearing date she already obtained. But otherwise, she must
13 obtain a new hearing date. If she is considering filing anything else in this case,
14 she is **ORDERED** to review and comply with the Civil Local Rules (particularly Rule
15 7.1) and the Court’s own standing order.

16
17 **IT IS SO ORDERED.**

18 Dated: May 31, 2018

19 
20 Hon. Larry Alan Burns
21 United States District Judge
22
23
24
25
26
27
28