

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-00698-ZLW

LEON K. GLADWELL,

Plaintiff,

v.

RANDY SCOFIELD, and
STERLING CORRECTIONAL FACILITY,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 26 2007

GREORY C. LINGHAM
CLERK

ORDER DENYING MOTION TO RECONSIDER

This matter is before the Court pursuant to the mandate of the United States Court of Appeals for the Tenth Circuit filed in this Court on April 16, 2007. The Tenth Circuit reversed this Court's denial of Plaintiff Leon K. Gladwell's Rule 60(b) motion and remanded the matter to this Court to consider the grounds raised by Mr. Gladwell in support of his Rule 60(b) motion.

On April 14, 2006, Mr. Gladwell was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this action and, pursuant to § 1915(b)(1), he was ordered to pay an initial partial filing fee of \$1.00. Mr. Gladwell was granted thirty days either to pay the initial partial filing fee or to show cause why he was unable to pay the initial partial filing fee. On April 21, 2006, Mr. Gladwell's April 20, 2006, motion requesting the Court to direct automatic deductions from his inmate account was denied. Mr. Gladwell did not pay the initial partial filing fee and he did not show cause why he was unable to pay the initial partial filing fee. He did not communicate with the

Court in any way until after the Court's Order and Judgment of Dismissal was filed on May 25, 2006. The Court dismissed the instant action without prejudice because Mr. Gladwell failed either to pay the initial partial filing fee or to show cause why he was unable to pay the initial partial filing fee.

On June 5, 2006, Mr. Gladwell filed a motion to reconsider the Order and Judgment of Dismissal in which he alleged that he had complied with the Court's order to pay an initial partial filing fee because a prison official had approved his request for a money order to pay the initial partial filing fee. In an order filed on June 9, 2006, the Court construed the June 5 motion to reconsider as asserted pursuant to Rule 59(e) and denied the motion because there was no record that Mr. Gladwell had paid the initial partial filing fee.

Mr. Gladwell then filed on June 29, 2006, a "Motion to Amend Order of Dismissal of Motion to Reconsider." The Court denied this second motion to reconsider in a minute order filed on June 30, 2006. The June 29 motion is the Rule 60(b) motion pending before the Court pursuant to the Tenth Circuit's mandate.

In the Rule 60(b) motion, Mr. Gladwell alleges that he made two timely efforts to pay the initial partial filing fee by attempting to purchase a money order with the funds in his inmate account. Mr. Gladwell asserts that prison officials denied both requests for a money order even though he had sufficient funds in his inmate account to purchase a money order and pay the initial partial filing fee. Mr. Gladwell contends that his requests to purchase a money order were denied on May 8 and May 18, 2006.


Relief under Rule 60(b) is appropriate only in extraordinary circumstances. **See *Massengale v. Oklahoma Bd. of Examiners in Optometry*, 30 F.3d 1325, 1330 (10th**

Cir. 1994). Upon consideration of the Rule 60(b) motion and the entire file, the Court finds that Mr. Gladwell fails to demonstrate the existence of any extraordinary circumstances that would justify a decision to reconsider and vacate the order dismissing this action. Even if prison officials improperly denied Mr. Gladwell's requests to purchase a money order to pay the initial partial filing fee, Mr. Gladwell fails to provide any explanation for his failure to advise the Court, within the time allowed for paying the initial partial filing fee, of his efforts to pay the initial partial filing fee and the problems he encountered with prison officials denying his requests to purchase a money order. Accordingly, it is

ORDERED that the "Motion to Amend Order of Dismissal of Motion to Reconsider" filed on June 29, 2006, is denied.

DATED at Denver, Colorado, this 25 day of April, 2007.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 06-cv-00698-BNB

Leon K. Gladwell
Reg. No. 97783
Sterling Correctional Facility
PO Box 6000
Sterling, CO 80751

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 4/24/07

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk