

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00465-ZLW

MARK A. LACHNEY,

Plaintiff,

v.

MESA COUNTY SHERIFF'S DEPT.,  
SHERIFF STAN HILKEY,  
CAPTIAN [sic] FARLOW,  
CORRECTIONAL HEALTH CARE MANAGMENT [sic],  
DOCTOR HOLMES, and  
SUSAN GRIMSBY,

Defendants.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO  
OCT -2 2009  
GREGORY C. LANGHAM  
CLERK

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ORDER DENYING MOTION TO RECONSIDER

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Plaintiff, Mark A. Lachney, filed **pro se** on September 17, 2009, a motion titled "Application for Appointment of Legal Assistance and Reconsideration of Dismissal of Civil Case #09-cv-00465-BNB" asking the Court to reconsider and vacate the Order of Dismissal and the Judgment filed in this action on June 24, 2009. The Court must construe the motion for reconsideration liberally because Mr. Lachney is proceeding **pro se**. See **Haines v. Kerner**, 404 U.S. 519, 520-21 (1972); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991). For the reasons stated below, the motion to reconsider will be denied.

A litigant subject to an adverse judgment, and who seeks reconsideration by the district court of that adverse judgment, may "file either a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) or a motion seeking relief from the judgment

pursuant to Fed. R. Civ. P. 60(b).” ***Van Skiver v. United States***, 952 F.2d 1241, 1243 (10th Cir. 1991). A motion to reconsider filed more than ten days after the final judgment in an action should be considered pursuant to Rule 60(b). ***See id.*** at 1243. Mr. Lachney’s motion to reconsider in this action, which was filed more than ten days after the Order of Dismissal and the Judgment, will be considered pursuant to Fed. R. Civ. P. 60(b). 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).

The Court dismissed the amended complaint and this action without prejudice because the amended complaint failed to comply with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. The June 24, 2009, dismissal order discusses in detail the reasons for the dismissal. Upon consideration of the motion to reconsider and the entire file, the Court finds that Mr. Lachney fails to demonstrate the existence of any extraordinary circumstances that would justify a decision to reconsider and vacate the order dismissing this action. Therefore, the motion to reconsider will be denied.

The Court notes that the dismissal of this action was without prejudice. If Mr. Lachney wishes to pursue his claims, he may do so by initiating a separate action. Accordingly, it is


ORDERED that the motion titled “Application for Appointment of Legal Assistance and Reconsideration of Dismissal of Civil Case #09-cv-00465-BNB” that

Plaintiff, Mark A. Lachney, filed *pro se* on September 17, 2009, and which the Court has construed liberally as a Fed. R. Civ. P. 60(b) motion, is denied. It is

FURTHER ORDERED that Mr. Lachney's request for the appointment of counsel to represent him is denied as moot.

DATED at Denver, Colorado, this 1st day of Oct, 2009.

BY THE COURT:

  
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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. 09-cv-00465-ZLW

Mark A. Lachney  
Prisoner No. 145627  
Fremont Corr. Facility  
P.O. Box 999  
Cañon City, CO 81215- 0999

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/2/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk