

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 09-cv-01018-PAB

KENNETH L. SMITH,

Plaintiff,

v.

STEPHEN H. ANDERSON, et al.,

Defendants.

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

This matter is before the Court on plaintiff's motion to alter or amend judgment [Docket No. 54]. Plaintiff invokes Federal Rule of Civil Procedure 59(e). Because he filed his motion outside the time provided by Rule 59(e), however, his motion will be treated as a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60. Federal Rule of Civil Procedure 60(b) allows a court to grant relief from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud . . . , misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged . . . ; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Plaintiff's motion does not implicate any of these grounds for relief from judgment. Rather, plaintiff simply reasserts arguments he has already addressed or which were available during the original proceeding. See *Servants of*

Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000); *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991). None of those arguments constitutes “exceptional circumstances.” *Yapp v. Excel Corp.*, 186 F.3d 1222, 1231 (10th Cir. 1999) (quoting *Cashner v. Freedom Stores*, 98 F.3d 572, 576 (10th Cir. 1996)); see *Davis v. Kansas Dep’t of Corrs.*, 507 F.3d 1246, 1248 (10th Cir. 2007) (stating that a Rule 60(b) motion “is not a substitute for an appeal”). Therefore, it is

ORDERED that plaintiff’s motion [Docket No. 54] is DENIED.

DATED January 13, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge