

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01648-ZLW

PETER GEORGACARAKOS,
Plaintiff,

v.

HARRELL WATTS,
DOCTOR BAXTER, and
HARLEY LAPPIN,
Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 16 2009

GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTION TO RECONSIDER

Plaintiff has filed *pro se* on December 3, 2009, a "Rule 60 Motion to Set Aside Judgment and Allow Plaintiff to Amend Complaint Consistent With Instructions" asking the Court to reconsider and vacate the Court's Order of Dismissal and the Judgment filed in this action on October 22, 2009. The Court must construe the motion liberally because Plaintiff is not represented by an attorney. *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 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 alter or amend the judgment must be filed within twenty-eight days after the judgment is entered. *See* Fed. R. Civ. P. 59(e). Therefore,

Plaintiff's motion to reconsider, which was filed more than twenty-eight days after the Judgment was entered in this action, will be considered pursuant to Fed. R. Civ. P. 60(b). **See *Van Skiver***, 952 F.2d at 1243 (stating that motion to reconsider filed after ten-day limit for filing a Rule 59(e) motion under prior version of that rule should be construed as a Rule 60(b) motion). 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 instant action without prejudice because Plaintiff failed to file an amended pleading on the Court's Prisoner Complaint form as required by the Court's local rules. **See D.C.COLO.LCivR 8.2A**. Plaintiff was directed to file an amended pleading on the proper form in an order filed on July 16, 2009. In a minute order entered on August 24, 2009, that deadline was extended to September 23, 2009. However, Plaintiff never filed an amended pleading on the proper form. As noted above, the Court's Order of Dismissal was filed on October 22, 2009. In an order filed on November 18, 2009, the Court denied Plaintiff's motion to reconsider pursuant to Rule 59(e).

In his motion to reconsider filed on December 3, Plaintiff asks the Court to set aside the Judgment in this action and grant him thirty days to amend his complaint. Plaintiff asserts that the Court may set aside a judgment pursuant to Rule 60(b) when a party has made an excusable litigation mistake.

Upon consideration of the motion to reconsider filed on December 3 and the entire file, the Court finds that Plaintiff fails to demonstrate the existence of any

extraordinary circumstances that would justify a decision to reconsider and vacate the order dismissing this action. Although a party's excusable litigation mistake is a legitimate basis for relief pursuant to Rule 60(b)(1), *see Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 576 (10th Cir. 1996), Plaintiff fails to identify any mistake, excusable or otherwise, that led to his failure to file an amended pleading on the proper form as directed. Accordingly, it is

ORDERED that Plaintiff's "Rule 60 Motion to Set Aside Judgment and Allow Plaintiff to Amend Complaint Consistent With Instructions" filed on December 3, 2009, is denied.

DATED at Denver, Colorado, this 16 day of December, 2009.

BY THE COURT:


ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

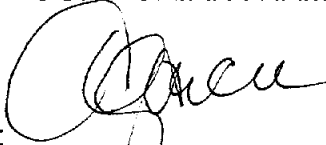
CERTIFICATE OF MAILING

Civil Action No. 09-cv-01648-ZLW

Peter Georgacarakos
Reg No. 03029-036
US Penitentiary ADX
P.O. Box 8500
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 12/16/09

GREGORY C. LANGHAM, CLERK

By: 
Deputy Clerk