

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01971-ZLW

THOMAS L. DAVIS, #20021-039,

Plaintiff,

v.

OFFICER SCOTT DOVE, and
OFFICER K. ESTRADA,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
DEC 11 2009
GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTION TO RECONSIDER

Plaintiff, Thomas L. Davis, is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the United States Penitentiary in Atwater, California. Mr. Davis filed a "Motion for Relief from Judgment Pursuant to F.R.C.P. 60(b)" on November 23, 2009. The Court must construe the Motion to Reconsider liberally because Mr. Davis is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Nonetheless, the Motion to Reconsider will be denied for the reasons stated below.

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. Davis' motion to reconsider, which was filed more than ten days after the Judgment

was entered in this action, 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).

On September 17, 2009, Magistrate Judge Boyd N. Boland entered an order granting Plaintiff leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in this action. On November 4, 2009, the Court dismissed this action because Mr. Davis failed either to pay an initial partial filing fee of \$1.00 or to show cause why he has no assets and no means to pay the initial partial filing fee by filing a current certified copy of his trust fund account statement, as required by Magistrate Boyd N. Boland's September 17, 2009, Order.

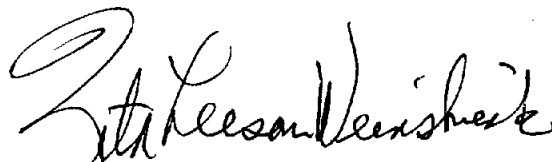
In Mr. Davis' Motion to Reconsider, he states that he has attempted to pay the \$1.00 filing fee by submitting a "Form 24." He also states that due to his recent transfer to a federal facility in Atwater, California, he has been denied access to his "law materials." However, Mr. Davis does not require access to "law materials" in order to pay his \$1.00 filing fee or file a current certified copy of his trust fund account statement. Neither does the Court have any evidence before it demonstrating that Mr. Davis attempted to pay the \$1.00 filing fee. In the September 17, 2009, Order, Mr. Davis was directed that he had thirty days in which to have the \$1.00 initial partial filing fee sent to the Clerk of the Court, or show cause why he has no assets by filing a current certified copy of his trust fund account statement. Mr. Davis failed to comply with this requirement. In the Motion to Reconsider, Mr. Davis does not identify any reason why he was unable to pay the initial partial filing fee, or provide a current, certified trust fund statement to the Court within the deadline set forth in the September 17, 2009, Order.

The Court, therefore, concludes that Mr. Davis fails to demonstrate some reason why the Court should reconsider and vacate the November 4, 2009, Order of Dismissal. Mr. Davis is reminded that the instant action was dismissed without prejudice, and he may, if he desires, seek to file a new action. Accordingly, it is

ORDERED that the "Motion for Relief from Judgment Pursuant to F.R.C.P. 60(b)," filed on November 23, 2009, is DENIED.

DATED at Denver, Colorado, this 11 day of Dec., 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-01971-ZLW

Thomas L. Davis
Reg No. 20021-039
US Penitentiary Atwater
P.O. Box 019001
Atwater, CA 95301

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 12/11/09

GREGORY C. LANGHAM, CLERK

By 

Deputy Clerk