

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00079-ZLW

KEITH RUSSELL JUDD,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

MAR 12 2010

GREGORY C. LANGHAM  
CLERK

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ORDER DENYING MOTION TO RECONSIDER

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Plaintiff, Keith Russell Judd, filed *pro se* on March 5, 2010, a "Motion to Alter or Amend Judgment Pursuant to Fed.R.Civ.P., Rule 59(e)" asking the Court to reconsider and vacate the Court's Order of Dismissal and the Judgment entered in this action on February 19, 2010. The Court must construe the motion liberally because Mr. Judd 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 (10<sup>th</sup> Cir. 1991). For the reasons stated below, the motion to reconsider will be denied.

A litigant subject to an adverse judgment 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 (10<sup>th</sup> 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). The Court will consider Mr. Judd's motion to reconsider pursuant to Rule 59(e) because it was filed

within twenty-eight days after the Judgment was entered in this action on February 19, 2010. **See *Van Skiver***, 952 F.2d at 1243 (stating that motion to reconsider filed within ten-day limit for filing a Rule 59(e) motion under prior version of that rule should be construed as a Rule 59(e) motion). The three major grounds that justify reconsideration are (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. **See *Servants of the Paraclete v. Does***, 204 F.3d 1005, 1012 (10<sup>th</sup> Cir. 2000).

The Court dismissed the instant action without prejudice because Mr. Judd failed to comply with an order directing him to cure certain deficiencies. More specifically, Mr. Judd was ordered to file a complaint and either to pay the filing fee or to file a motion for leave to proceed ***in forma pauperis*** pursuant to 28 U.S.C. § 1915. Mr. Judd also was directed to use the court-approved forms as required by the Court's local rules, **see** D.C.COLO.LCivR 8.2A. Blank copies of the proper forms were mailed to Mr. Judd with a copy of the order directing him to cure these deficiencies. Mr. Judd responded to the order to cure deficiencies by filing a complaint and a motion for leave to proceed ***in forma pauperis*** that were not on the court-approved forms. As a result, the Court dismissed the action without prejudice for failure to cure the deficiencies.

Mr. Judd makes only a brief reference to his failure to use the court-approved forms in the motion to reconsider. He contends that he timely complied with the order directing him to cure the deficiencies and that his complaint could not be adapted to a normal civil action form.

Upon consideration of the liberally construed motion to reconsider and the entire

file, the Court finds that Mr. Judd fails to demonstrate some reason why the Court should reconsider and vacate the order to dismiss this action. Mr. Judd fails to demonstrate the existence of an intervening change in controlling law or new evidence and he fails to convince the Court of any need to correct clear error or prevent manifest injustice. Mr. Judd's argument that he complied with the order to cure the deficiencies is not supported by the record, and the Court is not convinced by his conclusory argument that his claims could not be presented adequately on the Court's Prisoner Complaint form. Therefore, the motion to reconsider will be denied. Accordingly, it is

ORDERED that Mr. Judd's "Motion to Alter or Amend Judgment Pursuant to Fed.R.Civ.P., Rule 59(e)" filed on March 5, 2010, is denied.

DATED at Denver, Colorado, this 11th day of March, 2010.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge, for  
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. 10-cv-00079-ZLW

Keith Russell Judd  
Reg No. 11593-051  
Federal Corr. Institution  
P.O. Box 7000  
Texarkana, TX 75505-7000

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 3/2/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk