

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00912-REB-MEH

TINA GARCIA,

Plaintiff,

v.

BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA,

Defendant.

MINUTE ORDER

Entered by Michael E. Hegarty, United States Magistrate Judge, on June 9, 2010.

Pending before the Court is Plaintiff's Motion for Relief from a Void Judgment under 12(b)(1) and Supplemental Motion to Remand Back to State Court [filed June 9, 2010; docket #21]. The Plaintiff seeks an order vacating a judgment entered in Civil Action #04-cv-01619-LTB-BNB, remanding this case to state court, refusing supplemental jurisdiction in this case, causing the Tenth Circuit Court of Appeals to deny Defendant's appeal, and awarding her costs. The motion is **denied without prejudice**. A motion brought pursuant to Fed. R. Civ. P. 12(b)(1) seeks dismissal of the entire action based on the Court's lack of subject matter jurisdiction. Typically, a plaintiff wishing to dismiss his or her case seeks to do so pursuant to Fed. R. Civ. P. 41. In addition, the Plaintiff may not seek relief in this case from a judgment made in another case (*see* Fed. R. Civ. P. 60), and this Court has no power to take action in a pending appeal before the Tenth Circuit Court of Appeals.

The Court notes that Plaintiff's Motion to Remand remains pending in this case, and the Plaintiff's reply brief (should she wish to file one) is due to be filed on or before June 24, 2010 in accordance with D.C. Colo. LCivR 7.1C. The present motion appears to proffer arguments concerning the Plaintiff's pending Motion to Remand; the Court will allow the Plaintiff to re-file the document in the form of a reply brief in support of her Motion to Remand and in response to Defendant's response brief filed June 7, 2010.