

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

BETA UPSILON CHI, et al.,

Plaintiffs,

v.

CASE NO.: 1:07-CV-135-SPM/GRJ

J. BERNARD MACHEN, et al.,

Defendants.

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ORDER

THIS CAUSE comes before the Court upon Plaintiffs' Motion for Reconsideration of Order Denying Motion for Taxation of Costs and Supporting Memorandum of Law (doc. 297) and Defendants' reply (doc. 298). For the reasons set forth below, Plaintiffs' motion will be denied.

Plaintiffs have requested reconsideration of the Court's order denying the motion for taxation of costs (doc. 254) pursuant to Fed R. Civ. P. 54, 60, and the mandate of the Eleventh Circuit (doc. 288) finding that Plaintiffs were the prevailing party. However, "a rule 60(b) motion cannot substitute for an appeal. A party who has made a voluntary choice not to appeal from a judgment cannot be relieved from that choice under Rule 60(b)." Scutieri v. Paige, 808 F.2d 785, 795 (11th Cir. 1987); see also Parks v. United States Life and Credit Corp., 677 F.2d 838, 840 (11th Cir. 1982) (stating that "[a] party may not use Rule 60 as a substitute for a timely and proper appeal."). Further,

although Rule 60(b)(1) allows a court to provide relief from an order based on a mistake, Rule 60(c) requires that a motion filed based on a mistake be filed “no more than a year after the entry of the . . . order.”

Plaintiffs’ failed to appeal the ruling and are not entitled to relief through a Rule 60(b) motion. Moreover, even if this Court did consider the motion for reconsideration, it is untimely as it was not filed within one year of the entry of the order. The Order denying Plaintiff’s request for taxation of costs was entered December 15, 2010. The Eleventh Circuit decision on which Plaintiffs rely was issued on December 2, 2011. Therefore, Plaintiffs had the opportunity to timely file a motion for reconsideration, however, they failed to do so.

Accordingly, it is hereby ORDERED AND ADJUDGED: Plaintiffs’ Motion for Reconsideration of Order Denying Motion for Taxation of Costs and Supporting Memorandum of Law (doc. 297) is **denied**.

SO ORDERED this 24th day of July, 2012.

S/ Stephan P. Mickle

Stephan P. Mickle
Senior United States District Judge