UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

ERIC L. JOHNSON,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	Case No.: 2:14-CV-249
	)	
CITY OF SOUTH BEND, et al.,	)	(U.S. Court of Appeals for
	)	the Seventh Circuit Case No. 15-3887)
	)	
Defendants-Appellees.	)	

ORDER

This matter is before the court *sua sponte* for purposes of addressing the "Amendment Complaint" filed by Plaintiff Eric Johnson on January 5, 2015 (docket entry 23). The Defendants filed a response on September 22, 2015 (DE 26). The court construes Johnson's filing as a motion to alter or amend judgment pursuant to Fed.R.Civ.P. 59(e) and DENIES the motion.[1] The Clerk of the Court is instructed to docket this Order and forward a copy to the Clerk of the Court for the U.S. Court of Appeals for the Seventh Circuit.

DISCUSSION

Johnson filed this lawsuit on July 17, 2014 (DE 1). The Defendants filed a motion to dismiss the case on September 23, 2014 (DE 16) and this court granted the motion on December 9, 2014 (DE 21). That was supposed to be the end of this case, so far as this court was concerned. However, Johnson filed his document titled "Plaintiff's Amendment Complaint" about a month

[1] It should be noted that recently Johnson also filed a motion to proceed *in forma pauperis* on appeal and a motion for appointment of counsel (DE 30 and 32, respectively). On February 29, 2016, this court entered an order denying Johnson's motion to proceed *in forma pauperis* and deeming moot his motion to appoint counsel (the latter having been forwarded to the court of appeals, where it was intended to be filed). *See* Order (DE 35).

after the case was dismissed. The Defendants filed a response a little more than nine months later. The Defendants' response does not state why it was filed so many months after Johnson filed his purported amended complaint. It would appear that defense counsel saw Johnson's filing at some point and concluded that a response was advisable even given the status of the case. This presumption is likely a valid one, given that the Defendants state in their response that it "appears to Defendants [that Johnson's purported amended complaint is] more of a Motion for Relief from Judgment, than an amended complaint." Defendants' Response, p. 1. The Defendants then go on to argue that Johnson's motion should be denied because Johnson "has not provided any basis under F.R.C.P. Rule [sic] 60(b) to demonstrate a just basis for vacating the Opinion and Order of this Court." Defendants' Response, p. 3. Notwithstanding the Defendants' interpretation, this court deems Johnson's filing to be a Rule 59(e) motion rather than a Rule 60(b) motion (a conclusion shared by the Seventh Circuit Court of Appeals, as discussed below). Accordingly, the filing should be (and *should have been* from the outset) construed as a motion to alter or amend judgment pursuant to Rule 59. Again, the parties' filings were made after the court had entered an Opinion and Order dismissing this case in its entirety on December 9, 2014 (DE 21). Johnson's filing languished since it was filed in a closed case and was not accompanied by or titled as any sort of motion, which would have alerted the Clerk's Office to bring the filing to the court's attention (something that should have been done anyway). Neither party pursued the matter and Johnson did not file any reply to the Defendants' response brief. Eleven months later, on December 18, 2015, Johnson filed a notice of appeal (DE 27) indicating his intention to appeal this court's December 2014 order dismissing this case to the U.S. Court of Appeals for the Seventh Circuit. The appeal was docketed in the Seventh Circuit

on December 30, 2015 (DE 29).

"Ordinarily, filing a notice of appeal divests a district court of jurisdiction." *U.S. v. Ramer*, 787 F.3d 837, 838 (7th Cir. 2015) (citations omitted). "The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *U.S. v. Brown*, 732 F.3d 781, 787 (7th Cir. 2013) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). "'Only one court at a time has jurisdiction over a subject.'" *Id*. (quoting *United States v. McHugh*, 528 F.3d 538, 540 (7th Cir. 2008)). "The point of the rule is to 'avoid the confusion of placing the same matter before two courts at the same time and to preserve the integrity of the appeal process.'" *Id.* (quoting *In re Teknek, LLC*, 563 F.3d 639, 650 (7th Cir. 2009)).

Regrettably, in this case, confusion was not avoided. Shortly after Johnson filed his notice of appeal, the Defendants filed a motion to dismiss it pursuant to Fed.R.App.P. 27 on the basis that it was untimely. Appellate Court Docket at 12. The parties then began litigating the motion to dismiss the appeal. *Id*. at DE 15 (Appellant's brief) and DE 17 (Appellees' Response). Meanwhile, Johnson's filing in this court, and the Defendants' response, sat on the shelf gathering dust until very recently, when the court of appeals spotted them on the docket, which in turn led that court to question its own jurisdictional authority to hear Johnson's appeal.

On February 5, 2016, the appellate court entered an order noting the filing of Johnson's "Amendment Complaint" and concluding that "[s]ince the paper captioned 'Plaintiff's Amendment Complaint' was filed within 28 days of entry of judgment on December 9, 2014, the plaintiff's filing may be treated as a timely Rule 59 motion." Order, Appellate Court DE 18, pp.

1-2 (citing *Charles v. Daley*, 799 D.2d 343, 347 (7th Cir. 1986)). The appellate court then stated as follows: "IT IS ORDERED that appellees shall file, on or before February 19, 2016, a brief memorandum stating why this appeal should not be STAYED pending the entry of the order disposing of the motion[.]" and also stating that "[b]riefing shall be suspended pending further court order." *Id*., p. 2. The court instructed the appellees to caption their filing as a "Jurisdictional Memorandum." *Id*. This court, however, was never privy to these orders or otherwise aware that the appellate court had raised this issue. On February 19, 2016, the appellees filed their "Jurisdictional Memorandum" as directed by the Seventh Circuit. Appellate Court DE 19-1. In that memorandum, appellees state that they "recognize that the Appellant filed in the District Court a Plaintiff's Amendment Complaint, which Appellees filed a response to and left it to the district court's discretion of whether [sic] to treat it as a Rule 59 motion." *Id*., p. 1. (Actually, as stated above, the Defendants incorrectly interpreted Johnson's filing as a motion under Rule 60.) Finally, on February 23, 2016, the Seventh Circuit entered another Order, again directed at the Defendants/Appellees, which stated, in its entirety, as follows:

> On consideration of the "Jurisdictional Statement" filed by appellees on February 19, 2016,
>
> IT IS ORDERED that appellees file, on or before March 1, 2016, a status report regarding the disposition of plaintiff's filing captioned "Plaintiff's Amendment Complaint."
>
> If the district court has not issued its ruling, counsel for appellees should inquire of the district judge when a ruling is expected.
>
> Briefing shall continue to be SUSPENDED pending further court order.

Appellate Court DE 20. The next day, defense counsel contacted this court and sent the court a copy of the Seventh Circuit's February 23 order. It was at that point that this court became aware,

for the first time, of the issue regarding Johnson's "Amendment Complaint." This recitation of the events that led to the present confusion is not intended to excuse the fact that Johnson's "Amendment Complaint" should have been brought to the court's attention when it was filed (or at the very least when the Defendants' response was filed nine months later), so the court could rule on it. It is this court's hope that that oversight will be remedied now.

This court agrees with the Seventh Circuit that Johnson's "Amendment Complaint" is properly construed as a motion under Fed.R.Civ.P. 59(e) since it seeks "to alter or amend" this court's order dismissing this case and was filed "no later than 28 days after the entry of the judgment." Fed.R.Civ.P. 59(e). "A motion to alter or amend a judgment is only proper when 'the movant presents newly discovered evidence that was not available at the time of trial or if the movant points to evidence in the record that clearly establishes a manifest error of law or fact.'" *Burritt v. Ditlefsen*, 807 F.3d 239, 252 (7th Cir. 2015) (quoting *Matter of Prince*, 85 F.3d 314, 324 (7th Cir. 1996)). In his motion, Johnson fails to set forth any grounds that would entitle him to relief from this court's judgment. Johnson's motion does not point to any "newly discovered evidence" nor does it establish that this court's ruling constituted "a manifest error of law or fact." Instead, as the Defendants state in their response, the motion merely "reiterate[s] the exact same facts" that were presented in his filings in this court in opposition to the Defendants' motion to dismiss (i.e., that he should be granted a "statutory exception" to the applicable statute of limitations because he suffered from alleged mental or emotional problems or illnesses that he claims prevented him from filing his original Complaint in a timely manner). Defendants' Response (DE 26), p. 1; Court Order (DE 21), generally. In short, Johnson's Rule 59 motion presents nothing new and adds nothing to the calculus. For this reason, the motion is DENIED.

CONCLUSION

For the reasons discussed herein, the "Amendment Complaint" filed by Plaintiff Eric Johnson on January 5, 2015 (DE 23) is construed as a motion to alter or amend judgment pursuant to Fed.R.Civ.P. 59(e) and is DENIED.[2] The Clerk of the Court is instructed to docket this Order and forward a copy to the Clerk of the Court for the U.S. Court of Appeals for the Seventh Circuit.

Entered: March 1, 2016.

/s/ William C. Lee
William C. Lee, Judge
United States District Court
Northern District of Indiana

[2] It should be noted that recently Johnson also filed a motion to proceed *in forma pauperis* on appeal and a motion for appointment of counsel (DE 30 and 32, respectively). On February 29, 2016, this court entered an order denying Johnson's motion to proceed *in forma pauperis* and deeming moot his motion to appoint counsel (the latter having been forwarded to the court of appeals, where it was intended to be filed). *See* Order (DE 35).