

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

ARCHIE LEE WHITEST, JR.,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO.: 3:04-CV-190-TS
)	
FRANK CANARECCI,)	
)	
Defendant.)	

OPINION AND ORDER

In this case, the Court entered a Memorandum and Order on March 17, 2005 [DE 73], as amended on March 18, 2005 [DE 75], granting summary judgment for the Defendant and against the Plaintiff, Archie Lee Whitest, Jr. After considering the Plaintiff's additional Objection and Reply filed on March 21, 2005 [DE 76], the Court reaffirmed summary judgment against the Plaintiff on March 23, 2005 [DE 77]. Thereafter, the Plaintiff filed a Motion to Correct Error [DE 78] alleging that the dismissal resulted from unfair bias against him, but the Court issued an Opinion and Order [DE 80] on April 21, 2005, finding the Plaintiff's contentions to be without merit and denying his Motion.

Now, over four years later, this matter is again before the Court on the Plaintiff's Motion to Correct Error [DE 81], which he filed on August 27, 2009. The Plaintiff's Motion to Correct Error is not filed pursuant to any particular Federal Rule of Civil Procedure, but considering the record in this case and his Motion's request for a fair trial, the Court deems his Motion a challenge to the merits of the Court's decision granting summary judgment, and thus the Court will consider whether his Motion is viable under Rule 59(e) or Rule 60(b). First, his Motion cannot be considered under Rule 59(e) because he failed to file it within the requisite ten-day period. *See* Fed. R. Civ. P. 59(e) ("A motion to alter or amend a judgment must be filed no later

than 10 days after the entry of the judgment.”). Second, although a district court may, under Rule 60(b), grant relief from a final judgment, order, or proceeding for a number of reasons, including mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, and fraud, Fed. R. Civ. P. 60(b)(1)-(3), the Plaintiff’s Motion is untimely because he was required to file it within one year of the judgment, Fed. R. Civ. P. 60(c)(1), and the Court may not extend that time, *see Arrieta v. Battaglia*, 461 F.3d 861, 864 (7th Cir. 2006). As to the other grounds under Rule 60(b), a motion for relief must be made “within a reasonable time,” Fed. R. Civ. P. 60(c)(1), but the Plaintiff has not offered any justification for his unreasonably long delay (over four years after the final judgment was entered) in filing his Motion. In addition to the Motion being filed too late, the Plaintiff filed the Motion without specifying what ground warrants reconsideration of the final judgment, and his lack of specificity for why relief should be afforded provides an additional reason for denying his Motion. *See Hope v. United States*, 43 F.3d 1140, 1144 (7th Cir. 1994) (directing that Rule 60(b) motions be shaped to the specific grounds for modification or reversal listed in Rule 60(b)). To the extent the Plaintiff again suggests that the judgment resulted from unjust bias, this contention was considered and deemed without merit on April 21, 2005, and the Plaintiff has not shown any change since the time of the Court’s decision warranting modification of the judgment. Additionally, as to the “catchall” provision in Rule 60(b)(6), the Plaintiff has not shown extraordinary circumstances that create a substantial danger that the underlying judgment was unjust. *Arrieta*, 461 F.3d at 865; *Margoles v. Johns*, 798 F.2d 1069, 1073 (7th Cir. 1986).

For these reasons, the Court DENIES the Plaintiff’s Motion to Correct Error [DE 81]. Additionally, the Plaintiff is not entitled to a refund of his filing fee just because he is dissatisfied

with the outcome of his quest. *See Bell v. Clark*, 194 F.3d 781, 782 (7th Cir. 1999). Accordingly, the Court also DENIES the Plaintiff's request for a refund of the filing fee.

SO ORDERED on September 22, 2009.

s/ Theresa L. Springmann
THERESA L. SPRINGMANN, JUDGE
UNITED STATES DISTRICT COURT
FORT WAYNE DIVISION