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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

KENNETH COUNCE,

Plaintiff,

v.

Case No. 13-3199-JTM

RYAN WOLTING et al.,

Defendants.

MEMORANDUM AND ORDER

This matter comes before the court on plaintiff Kenneth Counce's letter to the

Clerk of Court received and filed on December 19, 2019. Though styled as a letter to the

Clerk of Court, Counce's submission indicates that he wishes to file a petition under

Federal Rule of Civil procedure 5(c) and Rule 60(b) pertaining to an order issued on or

about September 22, 2015 by the Honorable Steve Johnson of the Ellsworth County,

Kansas District Court. This state court order ostensibly required the Kansas Highway

Patrol and the Ellsworth County Attorney to return, among other items of personal

property, \$520.00 in currency and a 2000 Plymouth Mini Van.

To the extent Counce's letter could be construed as a request for this court to order

the Kansas Highway Patrol and Ellsworth County Attorney to return the personal

property in question, the court lacks the jurisdiction to do so. This court's judgment as to

Mr. Counce's claims became final on March 2, 2018, when the court entered a

Memorandum and Order granting summary judgment in favor of all defendants based

upon a finding that they were entitled to qualified immunity. (Dkt. 215, 216). Counce

appealed that decision, which was affirmed by the Tenth Circuit Court of Appeals on

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January 31, 2019. (Dkt. 227). Accordingly, there is no active case or controversy before

this court involving these parties for this court to resolve. See DaimlerChrysler Corp. v.

Cuno, 547 U.S. 332, 126 S.Ct. 1854, 1861 (2006) (explaining the limitation of federal court

jurisdiction under Article III of the United States Constitution to actual cases or

controversies).

To the extent Counce's letter could be construed as a motion for relief under either

Federal Rule of Civil Procedure 5(c) or 60(b), it is likewise denied. Rule 5(c) provides no

basis for relief because it is only a procedural rule governing service of pleadings when a

case involves a large number of defendants. Rule 60(b) allows a movant to seek relief

from a final judgment on various grounds, but subsection (c)(1) of that rule specifies that

the motion must be made within a reasonable time, and for reasons listed in sections

(b)(1), (2), and (3), not more than a year after entry of the judgment. In this instance, the

motion has not been filed within a reasonable time, particularly in light of the fact that

Counce pursued a direct appeal of this court's decision to the Tenth Circuit Court of

Appeals, which affirmed this court's grant of summary judgment.

Because the court lacks jurisdiction to grant any of the relief requested by Counce,

the requests made in his December 19, 2019 letter are DENIED.

IT IS SO ORDERED.

Dated this 20th day of December, 2019.

/s/J. Thomas Marten

THE HONORABLE J. THOMAS MARTEN

UNITED STATES DISTRICT COURT

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