

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY BURSEY,

Plaintiff,

v.

DONNA KIMBER and COMMUNITY
ADMINISTRATIVE SERVICES, INC.,
jointly and severally,

Defendants.

Case No. 08-13766

Honorable Patrick J. Duggan

ORDER DENYING PLAINTIFF'S MOTION TO REINSTATE

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on October 22, 2009.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

This action, which was originally filed in the Circuit Court for Wayne County, Michigan, was removed to this Court on September 3, 2008. Defendants filed an Answer to Plaintiff's Complaint on September 10, 2008. On October 20, 2008, Plaintiff filed a motion to dismiss with prejudice and without costs. Defendants filed a concurrence in Plaintiff's motion and, on October 22, 2008, this Court granted Plaintiff's motion and dismissed his Complaint with prejudice. Now before the Court is Plaintiff's motion to reinstate his Complaint, filed September 18, 2009. Defendants oppose Plaintiff's motion and ask the Court to order Plaintiff to pay Defendants' reasonable attorneys' fees for

having to respond to the motion.

Although Plaintiff fails to identify any authority for his motion, Federal Rule of Civil Procedure 60(b) “gives the courts discretion to set aside a voluntary dismissal with prejudice if the dismissal was not a ‘free, calculated, and deliberate’ choice.” *Warfield v. AlliedSignal TBS Holdings, Inc.*, 267 F.3d 538, 542 (6th Cir. 2001) (quoting *Randall v. Merrill Lynch*, 820 F.2d 1317, 1321 (D.C. Cir. 1987)). Rule 60(b) also grants a court authority to vacate a judgment or order “for any other reason justifying relief from the operation of the judgment.” Fed. R. Civ. P. 60(b)(6). However, “[r]elief from a final judgment under Rule 60(b) is an ‘extraordinary remedy that is granted only in exceptional circumstances.’” *McAlpin v. Lexington 76 Auto Truck Stop, Inc.*, 229 F.3d 491, 503 (6th Cir. 2000) (quoting *Dickerson v. Bd. of Educ. of Ford Heights*, 32 F.3d 1114, 1116 (7th Cir. 1994)). A voluntary dismissal with prejudice operates as a final adjudication on the merits. *Warfield*, 267 F.3d at 542. Plaintiff fails to demonstrate the existence of exceptional circumstances warranting Rule 60(b) relief.

In his motion, Plaintiff asserts that he filed his motion to dismiss “due to the Defendants [sic] Attorney Claudia D. Orr threaten [sic] to have the plaintiff terminated by his second employer Macomb County.” (Doc. 13.) Plaintiff provides no details or evidence, however, to support this allegation. Plaintiff also asserts that “Macomb County have [sic] paid and is paying millions to Attorney Claudia D. Orr Law Firm.” He fails to explain how these alleged payments relate to the filing of his motion to dismiss. In sum, Plaintiff offers no persuasive argument or evidence to convince this Court that it should

set aside the October 2008 order dismissing his lawsuit with prejudice.

The Court declines Defendants' request for attorneys' fees and costs for having to respond to Plaintiff's motion. Defendants fail to cite any authority for their request and the Court does not believe that they have established that an award is warranted.

Accordingly,

IT IS ORDERED, that Plaintiff's motion reinstate his Complaint is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
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Claudia D. Orr, Esq.