

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FREDERICK O. OPIYO,

Plaintiff,

vs.

Case No. 09-13609

HON. GEORGE CARAM STEEH

DEPUTY H. BOEHM,
DEPUTY J. DARLING, and
DEPUTY WEDGE,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION
FOR RELIEF FROM JUDGMENT (DOC. 63)

Plaintiff moves the Court, “pursuant to Fed. R. Civ. P. 60(d),” to “set aside Summary Judgment obtained on fabricated evidence.” (Doc. 63 at PageID 603). It appears that plaintiff seeks relief from this Court’s September 16, 2010 “Order Adopting in Part Magistrate Judge’s Report and Recommendation.” (Doc. 26). The Magistrate Judge’s Report and Recommendation was filed on July 7, 2010. (Doc. 25).

The Court may relieve a party from a final judgment for fraud, misrepresentation, or misconduct by an opposing party. Fed. R. Civ. P. 60(b)(3). A motion invoking Rule 60(b)(3) “must be made within a reasonable time,” specifically, “no more than a year after the entry of the

judgment or order.” Fed. R. Civ. P. 60(c)(1). Plaintiff’s motion, however, was filed on June 7, 2017, nearly seven years after the summary judgment order was issued. Plaintiff attempts to avoid this time limit by moving for relief pursuant to Rule 60(d), which notes that Rule 60 “does not limit a court’s power to. . . set aside a judgment for fraud on the court.”

Plaintiff claims that defendant Boehm submitted fabricated evidence in support of the motion for summary judgment. Boehm relied on an affidavit of Nicholas Romzek, Jail Lieutenant for Sanilac County, stating that Sanilac County payroll records indicate that Boehm was not working on September 5, 2008. Plaintiff appears to complain that the Court relied on this affidavit, as opposed to relying on some other form of payroll evidence. Plaintiff’s argument fails. Romzek’s affidavit is sufficient and has not been impeached by plaintiff.

Plaintiff’s motion for reconsideration, therefore, is untimely and does not establish fraud on the Court. As such, plaintiff’s motion is DENIED.

IT IS SO ORDERED.

Dated: June 21, 2017

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on June 21, 2017, by electronic and/or ordinary mail and also on Frederick Opiyo #39194039, FCI Bastrop, P. O. Box 1010 Bastrop, TX 78602.

s/Barbara Radke
Deputy Clerk