

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ERNEST WILLIAMS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 4:09CV211 FRB
)	
JUDITH SILVEY, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on plaintiffs’ motion to vacate the Court’s Order dated March 25, 2009, and to reinstate the complaint as to defendants Kline, Haney, Griffith, Johnson, Roper, and Cornell. The motion will be denied.

On March 25, 2009, the Court reviewed the complaint pursuant to 28 U.S.C. § 1915(e) and dismissed defendants Kline, Haney, Griffith, Johnson, Roper, and Cornell because the complaint failed to show that these defendants were directly responsible for the alleged deprivations of plaintiffs’ constitutional rights. Subsequently, defendants Silvey, Whitener, Menteer, and Dunn filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Court granted the motion to dismiss, and plaintiffs appealed.

In their appeal, which is still pending, plaintiffs argue that the Court erred in dismissing the complaint under Rule 12(b)(6) as to defendants Silvey, Whitener,

Menteer, and Dunn. Plaintiffs did not argue on appeal that the Court erred when it dismissed this action under 28 U.S.C. § 1915(e) against defendants Kline, Haney, Griffith, Johnson, Roper, and Cornell.

Under Rule 60(b), the Court may grant relief from the judgment “for any other reason justifying relief.” Fed. R. Civ. P. 60(b)(6). However, “[a]bsent extraordinary circumstances, Rule 60(b)(6) motions cannot be used to remedy a failure to take an appeal.” Chambers v. Armontrout, 16 F.3d 257, 261 (8th Cir. 1994).

In this case, plaintiffs could have appealed the § 1915(e) dismissal of defendants Kline, Haney, Griffith, Johnson, Roper, and Cornell, but they failed to do so. Additionally, plaintiffs have failed to demonstrate that extraordinary circumstances exist in this case. As a result, plaintiffs’ motion will be denied.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs’ motion to vacate the Court’s Order dated March 25, 2009, and to reinstate the complaint as to defendants Kline, Haney, Griffith, Johnson, Roper, and Cornell [#48] is **DENIED**.

Dated this 2nd day of March, 2010.



FREDERICK R. BUCKLES
UNITED STATES MAGISTRATE JUDGE