

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GREGORY MCKENNA,)
)
 Plaintiff,)
)
 vs.)
)
 ST. LOUIS COUNTY POLICE)
 DEPARTMENT, et al.,)
)
 Defendants.)

Case No. 4:09CV1113 CDP

MEMORANDUM AND ORDER


I entered judgment in this case in January of 2010, dismissing plaintiff Gregory McKenna’s complaint under Rules 12(b)(6) and 12(h)(3) of the Fed. R. Civ. P. In his complaint, McKenna alleged that defendants and others violated his Constitutional rights by conspiring among themselves to allow members of the Mafia to stalk, torture, and extort him for several years. I dismissed McKenna’s complaint upon the motion of several defendants, however, because I concluded that, even if McKenna could ultimately prove the truth of his allegations, those facts would not give rise to any claim for relief. *See* 4:09CV1113 CDP, Memorandum & Order [#55].

McKenna’s appeal of that dismissal is currently pending in the Eighth Circuit, but he has now filed a motion for relief from judgment under Fed. R. Civ. P. 60(b)(2) in this Court, asserting that he has discovered new evidence supporting

his claims. McKenna is correct that I may consider a Rule 60(b) motion on its merits and deny it even if an appeal is currently pending before the Eighth Circuit. *See Hunter v. Underwood*, 362 F.3d 468, 475 (8th Cir. 2004). His motion is meritless, however. As I mentioned above, I dismissed McKenna's complaint for failure to state a claim as a matter of law. The new evidence McKenna attaches to his motion does not affect my analysis, nor does it cure the fact that his original complaint's allegations failed as a matter of law to give rise to any claim for relief. McKenna's motion must therefore be denied. *Cf. Flett v. W.A. Alexander & Co.*, 302 F.2d 321, 324 (7th Cir. 1962) (doubting the applicability of a Rule 60(b)(2) motion for relief because of newly discovered evidence when complaint was dismissed "without the introduction of evidence.").

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for relief from judgment [#74] is denied.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of August, 2010.