

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

MARK CLARK and)	
WILLIAM PERSON,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:14-cv-00668-FJG
)	
YRC FREIGHT,)	
)	
Defendant.)	
)	
)	
)	

ORDER

Pending before the Court are (1) Plaintiffs' Motion for Reinstatement of Case (Doc. No. 105), filed on May 16, 2016; and (2) Plaintiff's Response to Assessment of Costs (Doc. No. 106).

Summary judgment in favor of defendant was granted on March 8, 2016. In the same order, the Court denied plaintiffs' motion for appointment of counsel, as the issue was moot upon grant of summary judgment. The deadline for filing a notice of appeal passed in April 2016. See Fed. R. App. P. 4(a)(1)(A) (providing that a notice of appeal must be filed within 30 days after entry of judgment). No notice of appeal was timely filed. On March 29, 2016, defendant filed its Bill of Costs. Objections to the Bill of Costs were due on April 15, 2016. Plaintiffs filed no objections, and on April 28, 2016, costs were taxed in the amount of \$4,235.73.

On May 16, 2016, plaintiffs filed a pro se document (signed only by plaintiff Mark Clark), requesting reinstatement of their case due to the fact that they had requested appointment of counsel, and were not aware that the Court had listed them as proceeding pro se. See Motion, Doc. No. 105. Plaintiffs indicated they contacted NELA

("National Employment Lawyers Association), which informed them that they would not represent them because they did not know the facts of the case and believed they were out of time. Plaintiffs request that the Court appoint them counsel, and waive filing fees because of various family hardships.

In response to these two issues, defendant argues that (1) the request for counsel is moot because summary judgment was granted in favor of defendant; and (2) plaintiffs have not provided a factual or legal basis for reconsidering the Court's summary judgment ruling (noting that the briefing of same was complete before the Court granted plaintiffs' original counsel's motion to withdraw). Defendant also notes that plaintiffs have not denominated this motion as a request for relief under Rule 59(e) or Rule 60(b). Plaintiffs have missed the deadline for filing a motion to alter or amend judgment under Rule 59(e), as such a motion is due no later than 28 days after the entry of the judgment. Under Rule 60(b), the Court may relieve a party from an order or final judgment "for any one of the enumerated reasons in the rule, including excusable neglect, surprise, newly discovered evidence, fraud, a void judgment, or any other reason that would justify relief." Employers Reinsurance Corp. v. Massachusetts Mutual Life Ins. Co., No. 06-0188-CV-W-FJG, 2008 WL 4693513, at *1 (W.D. Mo. Oct. 23, 2008). None of the enumerated reasons are present here. As a "district court should grant a Rule 60(b) motion only upon an adequate showing of exceptional circumstances," (Harris v. Potter, No. 4:08-CV-1191 CAS, 2009 WL 1045475, *2 (E.D. Mo. April 20, 2009)), and no exceptional circumstances are present here, plaintiffs' motion for reinstatement of the case (Doc. No. 105) is **DENIED**.

In a separate document (Doc. No. 106), plaintiffs submit a letter dated May 5, 2016 (and signed by neither plaintiff), stating that “[d]ue to the death of 2 family members within days of each other, I am requesting the amount [of costs] be waived and forgiveness for not responding before the deadline of April 28th.” Defendant responds that plaintiffs’ objection is untimely, and that plaintiffs have not shown that the requested costs were improper or that the Clerk’s office erred in taxing costs against them. The Court agrees, and plaintiffs’ late-filed objection to the bill of costs (Doc. No. 106) is **DENIED**.

IT IS FURTHER ORDERED that the Clerk of the Court send a copy of this order by regular and certified mail to plaintiffs at the following addresses:

Mark Clark
3520 Roeland Avenue
Kansas City, Kansas 66104

William Person
4936 Wabash Avenue
Kansas City, Missouri 64130

IT IS SO ORDERED.

Date: August 30, 2016
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge