

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION

NO. 2:21-CV-7-FL

DANIEL FELIX; HOMELESS CATS OF )  
HATTERAS ISLAND, NC; and NON- )  
PROPERTY ANIMALS OF HATTERAS )  
ISLANDS NC, )

Plaintiffs, )

v. )

DOUG DOUGHTIE, Sheriff in his official )  
and individual capacity; DONAVAN )  
RUTH, in his official and individual )  
capacity; DARE COUNTY, NORTH )  
CAROLINA; ROBERT OUTTEN, Dare )  
County Attorney, in his official and )  
individual capacity; ROBERT )  
WOODARD, Dare County Board of )  
Commissioner Chairman, in his official )  
capacity and individual capacity; WALLY )  
OVERMAN, Dare County Board of )  
Commissioner Vice Chairman, in his )  
official and individual capacity; ROB )  
ROSS, Dare County Board of )  
Commissioner, in his official capacity and )  
individual capacity; STEVE HOUSE, Dare )  
County Board of Commissioner, in his )  
official capacity and individual capacity; )  
JIM TOBIN, Dare County Board of )  
Commissioner, in his official capacity and )  
individual capacity; DANNY COUCH, )  
Dare County Board of Commissioner, in )  
his official capacity and individual )  
capacity; ERVIN BATEMAN, Dare )  
County Board of Commissioner, in his )  
official capacity and individual capacity; )  
ANDREW WOMBLE, District Attorney, )  
in his official capacity and individual )  
capacity;

ORDER



the court's order, citing Federal Rules of Civil Procedure 59 and 60. On July 2, 2021, plaintiff filed notice of appeal of the court's June 8, 2021, order.

## COURT'S DISCUSSION

### A. Jurisdiction

“Generally, a timely filed notice of appeal transfers jurisdiction of a case to the court of appeals and strips a district court of jurisdiction to rule on any matters involved in the appeal.” Doe v. Pub. Citizen, 749 F.3d 246, 258 (4th Cir. 2014). “[A] district court is authorized, under the in aid of appeal exception [to this general rule], to entertain” certain post-judgment motions “after a party appeals the district court’s judgment.” See Fobian v. Storage Tech. Corp., 164 F.3d 887, 890 (4th Cir. 1999). Accordingly, “when a party files a timely notice of appeal followed by a timely Rule 59 motion, the notice of appeal is tolled and does not become effective to confer jurisdiction on the court of appeals until the entry of an order disposing of the Rule 59 motion.” United States v. Silvers, 90 F.3d 95, 98 (4th Cir. 1996); see also Fed. R. App. P. 4(a)(1) (guiding that a “notice of appeal becomes effective to appeal a judgment or order . . . when the order disposing of . . . [a Rule 59] motion is entered”); Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 59 (1982) (“[I]n order to prevent unnecessary appellate review, the district court was given express authority to entertain a timely motion to alter or amend the judgment under Rule 59, even after a notice of appeal had been filed.”).

Further, the court construes plaintiff’s motion as arising solely under Rule 59(e), rather than Rule 60(b), because it was filed within 10 days of the court’s final judgment and challenges the correctness of that judgment. See Dove v. CODESCO, 569 F.2d 807, 809 (4th Cir. 1978) (“[I]f a post-judgment motion is filed within 10 days of the entry of judgment and calls into question the correctness of that judgment it should be treated as a motion under Rule 59(e) . . . .”); see also

Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412 n.11 (4th Cir. 2010) (explaining that although the Federal Rules of Civil Procedure have been subsequently amended, “CODESCO remains binding precedent”).

In sum, the court concludes it has jurisdiction to dispose of plaintiffs’ motion, but it treats such motion as only arising under Rule 59(e).

B. Merits

Rule 59 allows “[a] motion to alter or amend a judgment . . . no later than 28 days after the entry of the judgment.” Fed. R. Civ. P. 59(e). “[T]here are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Pac. Ins. Co. v. Am. Nat. Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). “Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance.” Id. Finally, to qualify for the third category, the judgment and related order “must be dead wrong.” Cf. TFWS, Inc. v. Franchot, 572 F.3d 186, 194 (4th Cir. 2009).

Here, the court’s review of plaintiff’s motion finds only arguments which could have been raised prior to issuance of judgment, (see, e.g., Pl.’s Mot. (DE 48) at 8 (raising an emotional-harm-caused-by-animal-deaths theory of injury); id. at 14 (raising additional arguments of unconstitutional policies by Dare County Commissioner defendants)), arguments regarding novel legal theories, (see, e.g., id. at 13 (raising a legal theory of “hostile living environment”)), or challenges to legal conclusions related to the judgment that the court concludes are not “dead wrong.” (See, e.g. id. at 6 (arguing that “Due Process Of Law rights guarantee these animals have

a right to bring a lawsuit just the same as a person”); *id.* at 11-12 (expounding further on plaintiff’s theory of ongoing harm that would negate claim preclusion)). Accordingly, plaintiff’s motion raises grounds beyond the scope of the remedy provided by Rule 59(e) and cannot be granted by the court.

### CONCLUSION

Based on the foregoing, the court DENIES plaintiff’s motion. (DE 48).

SO ORDERED, this the 19th day of July, 2021.

  
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LOUISE W. FLANAGAN  
United States District Judge