

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Ricky Whitmore,

Plaintiff,

v.

Case No. 2:15-cv-2838

Elmeaco Mallory, et al.,

Defendants.

ORDER

This matter is before the court for consideration of the April 18, 2017, report and recommendation issued by the magistrate judge, recommending that plaintiff's motion to reinstate his claims be denied. In his motion, plaintiff requests that his claims against Cheryl Mabry-Thomas, the Director of the Equal Employment Opportunity Commission, be reinstated. Plaintiff argues that because the Sixth Circuit Court of Appeals included this defendant's name in the caption of its decision which dismissed his appeal as untimely, that court must have concluded that he had advanced a valid claim against her. The magistrate judge construed the motion as one for relief from judgment pursuant to Fed. R. Civ. P. 60(b), and concluded that plaintiff failed to present grounds for relief under Rule 60(b). On May 2, 2017, plaintiff filed his objections to the report and recommendation.

If a party objects within the allotted time to a report and recommendation, the court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. §636(b)(1); see also Fed. R. Civ. P. 72(b). Upon review, the Court "may accept, reject, or modify, in whole or in part, the findings or

recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1).

The court agrees with the conclusion of the magistrate judge that plaintiff has shown no grounds for relief under Rule 60(b). The inclusion in the caption of the Sixth Circuit decision of the names of all defendants plaintiff listed in his complaint was simply a recounting of the parties plaintiff named in this action. The Sixth Circuit dismissed plaintiff's appeal as untimely, and did not address the merits of plaintiff's claims in any way. Plaintiff's objections do not demonstrate that the magistrate judge's recommendation to deny relief under Rule 60(b) was erroneous.

The report and recommendation of the magistrate judge (Doc. 19) is hereby adopted and affirmed. Plaintiff's motion to reinstate (Doc. 17) is denied.

Date: May 3, 2017

s/James L. Graham
James L. Graham
United States District Judge