UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

Plaintiff,

versus

WARDEN DOBBS, et al.,

Defendants.

CIVIL ACTION NO. 1:21-CV-377

MEMORANDUM OPINION AND ORDER

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Plaintiff Anthony Graham, an inmate confined at the United States Penitentiary located in Beaumont, Texas, proceeding *pro se*, brought the above-styled lawsuit.

Discussion

A final judgment was entered on November 2, 2021, dismissing the action for want of

prosecution. Plaintiff has filed a motion for equitable tolling and/or to reopen the case (#6).

Liberally interpreted, plaintiff's motion is construed as a motion to alter or amend judgment. This

memorandum considers such motion.

Analysis

Plaintiff's motion was filed within 28 days from the date the final judgment was entered.

Accordingly, the motion will be considered under Rule 59 of the Federal Rules of Civil Procedure.

FED. R. CIV. P. 59 provides in pertinent part the following:

(a)(1) *Grounds for New Trial*. The court may, on motion, grant a new trial on all or some of the issues - and to any party - as follows:

- (A) after a jury trial, for any of reason for which a new trial has heretofore been granted in an action at law in federal court; or
- (B) after a non jury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial*. After a nonjury trial the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(e) Motion to Alter or Amend Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Plaintiff asserts that his failure to comply with the order of the court was due to circumstances beyond his control. Plaintiff claims his mail is being held or discarded. Plaintiff alleges that he submitted two motions for extension of time which were not received by the court. Additionally, plaintiff asserts his access to legal resources is limited due to his confinement in segregation.

After careful consideration of plaintiff's motion, the court is of the opinion that plaintiff's motion sets forth a meritorious ground warranting reconsideration of the court's final judgment so plaintiff may have another opportunity to either pay the filing fee or submit an application to proceed *in forma pauperis*. The court will provide plaintiff an additional twenty days from the date of this order in which to comply with the court's order of July 26, 2021.

ORDER

For the reasons set forth above, plaintiff should be granted another opportunity to prosecute his lawsuit by paying the filing fee or submitting a proper application to proceed *in forma pauperis*. Accordingly, it is

ORDERED that plaintiff's motion for reconsideration is **GRANTED**. It is

ORDERED that plaintiff is **GRANTED** an extension of twenty days from the date of this order in which to either pay the \$402.00 filing fee or submit a proper application to proceed *in forma pauperis* in this action. It is further

ORDERED that the Clerk of Court is **DIRECTED** to forward to plaintiff a copy of the court's order filed July 26, 2021 (#2) along with his copy of this order.

SIGNED at Beaumont, Texas, this 13th day of September, 2022.

Maria a. Crone

MARCIA A. CRONE UNITED STATES DISTRICT JUDGE