

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CORNELIUS R. MADDOX,

Plaintiff,

v.

ORDER

06-C-761-C

GERALD BERGE, JON E. LITSCHER,
RANDY HEPP, PETER HUIBREGTSE,
CAPT BLACKBOURN, MS. T. HANSON,
LT. GRONDIN, LINDA HODDY-TRIPP,
TIM HAINES and MR. & MRS. MILES,

Defendants.

On February 8, 2007, I screened plaintiff's complaint in this case and dismissed certain claims under the screening provisions of 28 U.S.C. § 1915. One of the claims that failed to pass muster was plaintiff's claim that he had been denied procedural due process in connection with his transfer in January 2000 from the Whiteville Correctional Facility in Whiteville, Tennessee to the Wisconsin Secure Program Facility in Boscobel, Wisconsin, a "super maximum" institution. I dismissed this claim because it was clear that the statute of limitations for raising such a claim had run.

On July 18, 2007, the clerk of court entered judgment dismissing this action in its

entirety, after I concluded in a decision on summary judgment that plaintiff had not exhausted his administrative remedies with respect to the claims that remained in the case. Now plaintiff has submitted a document titled “Motion for an Amended Judgment,” which is dated August 15, 2007. I construe plaintiff’s motion as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59.

The purpose of a Rule 59 motion is to bring to the court's attention newly discovered evidence or a manifest error of law or fact. E.g., Bordelon v. Chicago School Reform Bd. of Trustees, 233 F.3d 524, 529 (7th Cir. 2000). It is not intended as an opportunity to reargue the merits of a case, Neal v. Newspaper Holdings, Inc. 349 F.3d 363, 368 (7th Cir. 2003), or as an opportunity for a party to start giving evidence that could have been presented earlier. Dal Pozzo v. Basic Machinery Co., Inc., No. 04-4277 (7th Cir. Sept. 6, 2006) (citing Frietsch v. Refco, Inc., 56 F.3d 825, 828 (7th Cir. 1995)). Motions under Rule 59 must be filed within ten days of the entry of judgment. Fed. R. Civ. P. 59(b). A litigant's failure to meet the time limits of Rule 59 forecloses him from raising in the district court his assertions that errors of law have been made. United States v. Griffin, 782 F.2d 1393 (7th Cir. 1986). If the motion is timely, the movant must “clearly establish” his or her grounds for relief. Romo v. Gulf Stream Coach, Inc., 250 F.3d 1119, 1122 n.3 (7th Cir. 2001). A timely motion filed pursuant to Fed. R. Civ. P. 59 tolls the time for taking an appeal.

Plaintiff’s motion is not timely. He signed and dated it on August 15, 2007. In

calculating the ten-day period between July 18, 2007, the date of entry of the judgment, and the deadline for filing a Rule 59 motion, the date of entry of the judgment and intermediate Saturdays, Sundays and legal holidays are excluded. Fed. R. Civ. P. 6(a). Therefore, plaintiff's deadline for filing his motion was August 1, 2007. Even applying the mail box rule described in Houston v. Lack, 487 U.S. 266 (1988), plaintiff's motion could not have been "filed" until at least August 15, 2007, the day he dated and signed it. Therefore, plaintiff's arguments in favor of altering the judgment are foreclosed.

Even if plaintiff's motion had been timely, however, I would have denied it. As I explained to plaintiff when I dismissed his procedural due process claim last February, the one-year statute of limitations period in Tenn. Code Ann. § 28-3-104(a)(1) for personal injury is the limitations period that governs his claim of constitutional wrongdoing arising out of his transfer to the Wisconsin Secure Program Facility. Berndt v. Tennessee, 796 F.2d 879, 883 (6th Cir. 1986)). (Tennessee's limitations period for actions brought under § 1983 for alleged violations of civil rights is one year). Sevier v. Turner, 742 F.2d 262, 272 (6th Cir.1984). Even if I were to accept his argument that the doctrine of a "continuing violation" applies and that his injury accrued each and every day he remained incarcerated at the facility, the one-year limitations period still would have passed before he filed this lawsuit. Plaintiff alleged in his complaint that his stay at the Wisconsin Secure Program Facility lasted approximately 20 months. His transfer to the facility occurred in January of

2000. His last day at the facility would have been sometime near the months of September or October 2001. Calculating one year from that time period, plaintiff would have had to file his complaint in September or October of 2002 in order to avoid the running of the statute of limitations. He did not submit it to this court for filing until December of 2006.

ORDER

IT IS ORDERED that plaintiff's "Motion for an Amended Judgment," construed as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59 is DENIED as untimely.

Entered this 3d day of September, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge