

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

EAGLE COVE CAMP & CONFERENCE CENTER INC.,
a Wisconsin non-stock corporation; ARTHUR G. JAROS, JR.,
individually and as co-trustee of the Arthur G. Jaros, Sr. and
Dawn L. Jaros Charitable Trust, and as trustee of the Arthur
G. Jaros, Sr. declaration of trust, and as trustee of the Dawn
L. Jaros declaration of trust; WESLEY A. JAROS, as co-trustee
of the Arthur G. Jaros, Sr. and Dawn L. Jaros charitable trust;
RANDALL S. JAROS, individually and as co-trustee of the
Arthur G. Jaros, Sr. and Dawn L. Jaros charitable trust;
CRESCENT LAKE BIBLE FELLOWSHIP, a Wisconsin
non-stock corporation; and KIM WILLIAMSON,

Plaintiffs,

vs.

OPINION AND ORDER

10-cv-118-wmc

TOWN OF WOODBORO, Wisconsin, a body corporate
and politic; COUNTY OF ONEIDA, Wisconsin, a body
corporate; and ONEIDA COUNTY BOARD OF ADJUSTMENT,

Defendants.

On February 4, 2013, this court granted summary judgment to defendants on all federal claims and related Wisconsin Constitutional claims and declined to continue to exercise supplemental jurisdiction over the remaining state law certiorari claim, which was dismissed without prejudice. (Dkt. #155.) Judgment was entered the next day. (Dkt. #156.) Plaintiffs appealed, and this court's decision was affirmed on October 30, 2013. (Dkt. #169-1.)

More than two years after this court's entry of final judgment in this case, plaintiffs -- a group seeking to build a year-round Bible camp on a specific piece of land located in the Town of Woodboro, Oneida County, Wisconsin -- filed two related

motions under Federal Rules of Civil Procedure 54(b) and 60(b), seeking relief from that judgment. For the reasons that follow, the court will deny both motions, finding neither Rule affords post-judgment relief to plaintiffs. Indeed, under the law and proceedings here, it is not even a close call.

OPINION

In their complaint in this court, plaintiffs asserted a myriad of claims under various provisions of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* (“RLUIPA”), certain provisions of the United States and Wisconsin Constitutions, the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, the Rehabilitation Act, 29 U.S.C. § 794, and a state law claim for certiorari review pursuant to Wisconsin Statute § 59.694(10). Material to plaintiffs’ present motions, the court granted summary judgment to defendant on plaintiffs’ “substantial burden” claim under RLUIPA, finding plaintiffs had failed to demonstrate that defendants’ refusal to rezone the land or provide a conditional land use permit did not render plaintiffs’ religious practice “effectively impracticable.” (2/4/13 Op. & Order (dkt. #155) 34 (citing *Civil Liberties for Urban Believers v. City of Chi.*, 342 F.3d 752, 761 (7th Cir. 2003) (discussing 42 U.S.C. § 2000c(a)(1)).

After the United States Supreme Court denied plaintiffs’ petition for *certiorari* review of this court’s final judgment, however the Court eased this substantial burden

standard. *See Holt v. Hobbs*, 135 S. Ct. 853 (2015);¹ *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014); *see also Schlemm v. Wall*, 784 F.3d 362, 364 (7th Cir. 2015) (recognizing the change in standard). Based on this change, plaintiffs seek relief from the court's grant of summary judgment on their RLUIPA substantial burden claim. Without commenting on whether the changed standard would have made a material difference in the final judgment in this case, the Federal Rules of Civil Procedure simply do not provide an avenue for plaintiffs to reopen that judgment.

Plaintiffs first cite to Rule 54(b) for relief. That rule provides in pertinent part:

(b) Judgment on Multiple Claims or Involving Multiple Parties. When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

Fed. R. Civ. P. 54(b).

Plaintiffs argue that this court's decision to dismiss plaintiffs' state law certiorari claim without prejudice, and plaintiffs' ongoing pursuit of that claim in state court empowers me to "revise" the judgment even years after its entry. The fundamental flaw

¹ The Supreme Court denied plaintiffs' writ of certiorari on May 5, 2014, approximately two months after the Court had granted certiorari in *Hobbs*. The Court could have held plaintiffs' writ of certiorari pending a decision in the *Hobbs* case but opted not to, although as has been oft emphasized by the Supreme Court, that denial has no precedential impact. *See, e.g., Hopfmann v. Connolly*, 471 U.S. 459, 461 (1985).

in this argument in that the court’s June 5, 2013, judgment was *not* a “partial” judgment; it was a final judgment on all of plaintiffs’ claims. After entry of that judgment, all of the claims against all of the parties in this action had been disposed of; there was no further work for this court to do; and the case was closed. (2/5/13 Judgment (disposing of all claims against all defendants, and *not* certifying an appeal of a partial judgment under Rule 54(b)).) The fact that the parties continued to pursue litigation as to one of their state law claims in state court did not leave any claim open for the court to review under Rule 54(b).

Perhaps in recognition of this settled law, plaintiffs turn next to the catch-all provision in Rule 60(b)(6), which does allow for relief from final judgment for “any other reason that justified relief.” Notwithstanding this seemingly broad language, however, Rule 60(b)(6), too, proves to be a dead end. As the Supreme Court has explained, “intervening developments in law by themselves rarely constitute extraordinary circumstances required for relief under Rule 60(b)(6).” *Agostini v. Felton*, 521 U.S. 203, 239 (1997). *Shah v. Holder*, 736 F.3d 1125, 1127 (7th Cir. 2013) (holding that district court cannot use Rule 60(b)(6) to apply new decisional law to a closed civil case); *Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.*, 131 F.3d 625, 628-29 (7th Cir. 1997) (fact that federal court’s interpretation of state law in diversity case was contrary to interpretation later reached in another case by the state’s highest court does not constitute extraordinary circumstances).² Given this case law, a leading treatise has

² While the Seventh Circuit has allowed some opening for changes in decisional law in the post-conviction context, the court’s reasoning for adopting a “flexible approach” in that context does

concluded that “changes in decisional law should not, by themselves, be the basis for relief from judgments that have no prospective application.” 12 James Wm. Moore, *Moore’s Fed. Practice* § 60.48[5][b] (3d ed. 2016). As a result, the final judgment ties this court’s hands under Rule 60(b)(6) as well.

Likely in further recognition of the weakness of its claims to relief under Rules 54(b) and 60(b)(6), plaintiffs filed a second motion, this time pointing to Rule 60(b)(5). That rule provides for relief from a final judgment where “applying it prospectively is no longer equitable.” This provision necessarily requires that a judgment is applied “prospectively.” As the D.C. Circuit explained,

Virtually every court order causes at least some reverberations into the future, and has, in that literal sense, some prospective effect; even a money judgment has continuing consequences, most obviously until it is satisfied, and thereafter as well inasmuch as everyone is constrained by his or her net worth. That a court’s action has continuing consequences, however, does not necessarily mean that it has “prospective application” for the purposes of Rule 60(b)(5).

Twelve John Does v. D.C., 841 F.2d 1133, 1138 (D.C. Cir. 1988).

Typically, judgments involving prospective application concern an injunction or consent decree, neither of which is at issue here. *Horne v. Flores*, 557 U.S. 433, 447 (2009). While plaintiffs may continue to feel the repercussions of the court’s grant of judgment to defendant, there is no injunction or consent decree which is being applied. Indeed, plaintiffs themselves emphasize their continued efforts for relief in state court.

not apply to the civil claims pursued here. *Ramirez v. United States*, 799 F.3d 845, 851 (7th Cir. 2015).

Regardless, Rule 60(b)(5) does not provide an avenue for this court to reconsider the judgment due to a change in caselaw.

While there is no avenue for further relief in this case, in light of the changed standard of a “substantial burden” under RLUIPA, perhaps plaintiffs could start again by filing a *new* (scaled back) petition for a conditional use permit or rezoning before the appropriate Town and County agencies, but that is a local government administrative remedy far outside of the confines of jurisdiction of this court.

ORDER

IT IS ORDERED that plaintiffs’ motions for relief from judgment (dkt. ##171, 178) are DENIED.

Entered this 11th day of August, 2016.

BY THE COURT:

/s/

William M. Conley
District Judge