

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

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ALAN DAVID McCORMACK,

Plaintiff,

v.

GERALD WRIGHT, MICHAEL J.  
GABLEMAN and BURNETT COUNTY  
CIRCUIT COURT,

Defendants.

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OPINION AND ORDER

12-cv-483-bbc

In an order entered on October 23, 2012, plaintiff's complaint was dismissed with prejudice because defendants had absolute judicial immunity from suit under 18 U.S.C. § 1983 for acts taken in their judicial capacity. Dkt. #9. Judgment was entered on October 24, 2012. Plaintiff filed a timely motion seeking to alter or amend the judgment and to amend his complaint, dkt. #10, which I denied on December 12, 2012, because he had identified no contrary legal authority and his proposed amendments were futile.

Plaintiff filed a notice of appeal on December 3, 2012. On December 26, 2012, he filed a second motion to alter or amend the judgment under Fed. R. Civ. P. 59(e), dkt. #19, and a motion for a Spears hearing. Dkt. #21. He then filed a motion to withdraw his appeal with the Court of Appeals for the Seventh Circuit, which was granted on January 9, 2012. Accordingly, plaintiff's second motion to alter or amend the judgment and his motion for a Spears hearing are ready for decision.

Plaintiff's second motion to alter or amend the judgment is untimely. Parties have 28 days to file a motion to amend a judgment under Fed. R. Civ. P. 59(e). Under this rule, plaintiff had until December 21, 2012 to file such a motion. He missed that deadline and it cannot be extended. Fed. R. Civ. P. 6(b)(2) ("A court must not extend the time to act under [Rule] 59(b), (d), and (e)."). Because his motion was untimely, I must treat it as a motion for relief from the judgment under Rule 60(b). Russell v. Delco Remy, 51 F.3d 746, 749 (7th Cir. 1995).

In his motion, plaintiff argues that defendants were not acting in their judicial capacity when they refused to rule on his fourteen pending motions. He argues that their flagrant violation of state law was an "abuse of process," which he believes can support a due process claim that is not barred by the doctrine of qualified immunity. Plaintiff had a chance to argue that the court made a legal mistake in a timely Rule 59(e) motion, but such an argument is not a sufficient basis for a Rule 60(b) motion. Eskridge v. Cook County, 577 F.3d 806, 808-09 (7th Cir. 2009); Marques v. Federal Reserve Bank of Chicago, 286 F.3d 1014, 1017-18 (7th Cir. 2002) ("A legal error by the district court is not one of the specified grounds for a [Rule 60(b)] motion. In fact it is a forbidden ground."). In any case, even if plaintiff's motion had been timely, his argument lacks legal merit. I dismissed plaintiff's claim because defendants have absolute judicial immunity. Whether a defendant enjoys judicial immunity depends on the nature of the act, not on whether the judge was acting with a bad motive or violating the law. Forrester v. White, 484 U.S. 219, 227-28 (1988). Because I am denying plaintiff's motion to amend the judgment, I will deny his motion for

a Spears hearing as moot.

ORDER

IT IS ORDERED that

1. Plaintiff Alan David McCormack's motion to alter or amend judgment, dkt. #19, is DENIED.

2. Plaintiff's motion for a Spears hearing, dkt. #21, is DENIED as moot.

Entered this 8th day of March, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge