

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

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RODOSVALDO POZO,

Plaintiff,

MEMORANDUM

v.

02-C-12-C

BRAD HOMPE, VICKI SHARPE,  
CAPT. BLACKBORN, WARDEN GERALD BERGE,  
ALL NURSES JANE DOES, SGT. JUNTSSEN,  
KELLD COON ICES, CAPT. RICHARDSON,  
SGT. KUFMOUSS, SGT. SICKINGER,  
JULIE BIGGAR, WARDEN BERGE, SGT.  
HUIBRETSZ, JON LITSCHER, SECRETARY A COKKS,  
PSYCHOLOGIST CHRISTINE APPEAL, SECURITY  
DIRECTOR BOUGHTON, C/O PINNEL, TIM HAINES,  
JOHN SHARPE, JOHN DOES 1-50, DR. GERT HUSSELHOF,  
(ELLE RAY RCES), MS. DUESTERBECK, JOANN GOVIER,  
C/O ECK, KELLY COON, and NURSE MS. RENEVA,

Defendants.

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Judgment was entered in this case on April 9, 2003. Subsequently, plaintiff filed a notice of appeal. I granted plaintiff's request for leave to proceed in forma pauperis on appeal on May 15, 2003. Now defendants have filed a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 60(a), but they likely mean Rule 60(b). They argue that

the court inadvertently or mistakenly failed to list defendant Secretary A. Cokks in the caption of the first substantive order in the case, the February 19, 2002, screening order. This mistake was compounded when Cokks was not identified as a defendant in the body of the February 19 order or at any other time while the action was pending, including the judgment of dismissal. See Fed. R. Civ. P. 60(b)(1) (court may relieve party from final judgment for “mistake, inadvertence, surprise, or excusable neglect”). Although defendants’ motion was filed after plaintiff filed his appeal, this court has jurisdiction to consider the motion. See Brown v. United States, 976 F.2d 1104, 1110-11 (7th Cir. 1992) (“Parties may file motions under Rule 60(b) in the district court while an appeal is pending. In such circumstances we have directed district courts to review such motions promptly, and either deny them or, if the court is inclined to grant relief, to so indicate so that we may order a speedy remand.”).

Although the record of this case is in the court of appeals, I have reviewed a copy of the February 19 screening order. In that order, I identified every constitutional claim plaintiff raised and, as to those claims on which I was allowing plaintiff to proceed, specified precisely against which defendants plaintiff had stated a claim for relief. I denied plaintiff leave to proceed in forma pauperis on all of his other claims and dismissed the remaining defendants from the case. It was inadvertent error to fail to include Secretary A. Cokks in the caption of the February 19 order or identify her in the order and the final judgment as a defendant who was dismissed from the case. If the court of appeals were to remand the

case to this court, I would be inclined to grant the motion to alter or amend the judgment to reflect that plaintiff was denied leave to proceed in forma pauperis against defendant Cokks and that Cokks has been dismissed from the case.

Entered this 17th day of June, 2003.

BY THE COURT:

BARBARA B. CRABB  
District Judge