

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

DWAYNE ALMOND,

Plaintiff,

ORDER

v.

06-C-446-C

LT. MARK LESATZ,

Defendant.

In an order dated October 29, 2006, I granted defendant's motion to dismiss plaintiff's complaint because plaintiff had not exhausted his administrative remedies fully as required by 42 U.S.C. § 1997e(a). Judgment was entered dismissing the case on October 31, 2006. Now before the court is a letter written by plaintiff, which I construe as a motion for relief from judgment under Fed. R. Civ. P. 60.

Once a case has been closed, a party seeking reconsideration of the order disposing of the case or the judgment may file one of two kinds of motions in the district court: a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59, or a motion for relief from the judgment or order pursuant to Fed. R. Civ. P. 60. Motions under Fed. R. Civ. P. 59 must be made within 10 days from the entry of judgment. Plaintiff's motion was filed

more than ten days after judgment was entered, therefore it will be treated as a timely motion under Fed. R. Civ. P. 60.

Rule 60 permits amendment of a judgment where there are clerical mistakes in the judgment or other parts of the record or where final judgment has been wrongly entered because of “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. Plaintiff appears to assert that he has submitted new evidence of exhaustion; however, no such evidence has been submitted to the court. The evidence plaintiff did submit in conjunction with his opposition to defendant’s motion to dismiss did not demonstrate that he had exhausted his administrative remedies.

In short, there is no legal ground that would permit me to re-open the lawsuit under the circumstances present in this case. Even if it were possible to reopen judgment under Rule 60, nothing in plaintiff’s motion suggests that this court erred when it concluded that he failed to exhaust his administrative remedies with respect to his claim against

defendant. Consequently, plaintiff's Rule 60 motion will be denied.

ORDER

IT IS ORDERED that plaintiff's motion for relief from judgment is DENIED.

Entered this 27th day of November, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge