

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

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BRYAN F. OPARKA,

Plaintiff,

v.

UNIFIED BUILDING SYSTEMS/MANAGEMENT CO.,

Defendant.

ORDER

09-cv-475-slc

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On September 27, 2010, judgment was entered dismissing this case with prejudice for plaintiff Bryan F. Oparka's failure to prosecute. On October 27, 2010, plaintiff filed a motion for reconsideration and in the alternative a request for an extension of time to file an appeal.

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 Rule 59 must be filed within twenty-eight days of the entry of judgment. Fed. R. Civ. P. 59(e). Because plaintiff's motion was not filed with twenty-eight days of the entry of judgment, it cannot be considered a Rule 59(e) motion to alter or amend judgment. Thus, plaintiff's motion will be considered as motion under Fed. R. Civ. P. 60(b).

Rule 60(b)(6) permits relief from a judgment for "any . . . reason justifying relief from the operation of the judgment." However, this provision has been interpreted as applying in situations in which extraordinary relief is sought and requires a showing of "extraordinary circumstances that create a substantial danger that the underlying judgment was unjust. *Margoles v. John*, 798 F.2d 1069, 1073 (7<sup>th</sup> Cir. 1986). Plaintiff has not shown any of these

circumstances. Rather, he continues to re-hash arguments already rejected by the court that he complied with discovery. Therefore, his motion for reconsideration will be denied.

In the alternative, plaintiff moves for an extension of time to file his notice of appeal. The district court may extend the time to file a notice of appeal if a party files the request for an extension within 30 days of entry of judgment and shows good cause. Fed. R. App. P. 4(1a)(5)(A). Plaintiff seeks an extension of time because he believed in error that filing a motion for reconsideration tolled his time for filing an appeal. The court will grant plaintiff's extension of time to file a notice of appeal until 14 days after the date of this order, that is, until December 6, 2010. Fed. R. App. P. 4(a)(5)(C).

#### ORDER

IT IS ORDERED that

(1), Plaintiff Bryan Oparka's motion for reconsideration, dkt. #37, is DENIED.

(2). Plaintiff's motion for an extension of time to file an appeal, dkt. # 37, is GRANTED until 14 days after the date of this order.

Entered this 22<sup>nd</sup> day of November, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge