

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

DAVID W. WATTS,

Plaintiff,

ORDER

v.

10-cv-550-wmc

DAN WESTFIELD and RICK RAEMISCH,

Defendants.

On July 11, 2014, the court granted defendants' motion for summary judgment and dismissed the prisoner civil rights case filed by plaintiff David W. Watts. Watts has filed an appeal from that decision. Watts has also filed a motion for relief from the final judgment under Fed. R. Civ. P. 60(b), alleging that defendants "hid" unspecified evidence of their guilt in this matter. Because Watts' appeal remains pending in the Seventh Circuit, his motion will be denied for reasons set forth briefly below.

In most cases, the filing a notice of appeal shifts jurisdiction from the district court to the court of appeals. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (emphasizing that "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously"); *United States v. Quintero*, 572 F.3d 351, 353 (7th Cir. 2009). This means that, once a notice of appeal is filed, further proceedings in the district court cannot take place without leave of the court of appeals. *See Henry v. Farmer City State Bank*, 808 F.2d 1228, 1240 (7th Cir. 1986) (citing *Asher v. Harrington*, 461 F.2d 890, 895 (7th Cir. 1972)).

Where a district court lacks authority to grant relief because of an appeal that has been docketed and is pending, the reviewing court has three options. The court may: “(1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.” Fed. R. Civ. P. 62.1(a). In this case, the court elects to deny the motion because it is conclusory and does not allege specific facts showing that Watts is entitled to relief under Rule 60(b).

ORDER

IT IS ORDERED that the motion for relief from the final judgment filed by plaintiff David W. Watts (dkt. # 159) is DENIED.

Entered this 30th day of January, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge