

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRIAN P. CARR, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 3:23-CV-02875-S

**DEFENDANTS' OBJECTION TO PLAINTIFF'S "FRCP
RULE 60 MOTIONS TO REVERSE DISMISSAL
OF MATTER AND RECUSAL"**

Plaintiff Brian P. Carr, pro se and ostensibly representing his wife, Rueangrong Carr (hereinafter Mrs. Carr), and Mrs. Carr's sister, Buakhao Von Kramer, continues to press claims that their complaint was improperly dismissed by this Court on March 21, 2025. (Doc. 62.) In what they explain is a "consolidate[ion] of 12 motions," Plaintiffs ask this Court to set aside its judgment and authorize an amended complaint to "correct all cited defects and add two new counts as well as two new defendants." (Doc. 73 at 4.)¹ For the reasons set forth below, this motion should be denied.

I. Procedural Background

Plaintiffs' Amended Complaint in this action sought damages from the United States Postal Service (USPS) for an allegedly delayed delivery of a package. (Doc. 29 at 2, 7-9). Plaintiffs also sought an order from the Court mandating that various federal

¹ For ease, Defendants refer to Carr, his wife, and Mrs. Von Kramer collectively as the "Plaintiffs," although for reasons explained by the Magistrate Judge and herein, only Mr. Carr is a proper plaintiff.

agencies, including the U.S. Department of Justice, initiate criminal investigations into the circumstances surrounding their various attempts to obtain immigration benefits, including naturalization for Mrs. Carr and a non-immigrant visa for Mrs. Von Kramer. (Doc. 29 at 9-45.) But as set forth in Defendants' motion to dismiss, Plaintiffs did not meet their initial burden to identify an applicable waiver of the federal government's sovereign immunity for any of their claims. (Doc. 31.) Moreover, as the Magistrate Judge determined, Mr. Carr, proceeding pro se, was essentially and impermissibly representing his wife and sister-in-law. (Doc. 61 at 1-3.) For those reasons, the Magistrate Judge issued Findings, Conclusions, and Recommendation of the United States Magistrate Judge (FCR) recommending dismissal of the complaint. (Doc. 61.) When Plaintiffs did not object to the recommendation, this Court reviewed the FCR for plain error and, finding none, accepted the recommendation and dismissed the complaint. (Doc. 62.)

Within days of the Court's decision, Plaintiffs began filing pleadings and various motions for reconsideration of this Court's decision. (*See* Docs. 64-68, 70, 71, 73.) Mrs. Carr, ostensibly, filed two pleadings explaining that she did not understand that Mr. Carr could not sign pleadings on her behalf and that she wished to continue in the litigation. (Docs. 64, 65.)² On April 7, 2025, the Plaintiffs filed an amended complaint and a motion pursuant to Fed. R. Civ. P. 60 asking the Court to "rescind its order" dismissing the claims in this case and to allow the amended complaint. (Docs. 66, 67.) The proposed amended complaint contained same "electronic" signature blocks and dates as

² Mr. Carr has indicated that neither Mrs. Carr nor Mrs. Von Kramer understand English. *See* Doc. 29 at 58 (explaining that he provided "relevant sections" of the amended complaint to Mrs. Carr and Mrs. Von Kramer in English and Thai, using Good Translate, and then discussed them in English using Google Translate); *see also* Doc. 67 at 7 (explaining that the two requests filed by Mrs. Carr were completed with his "clerical assistance in translating").

the dismissed complaint, as well as the same language regarding Mr. Carr signing the document on behalf of his wife and sister-in-law. (*See* Doc. 66 at 56-58; *see also* Doc. 29 at 56-58), although a handwritten signature was added for Von Kramer. (Doc. 66 at 56.) The motion for reconsideration explained that Plaintiffs had not had sufficient time to draft their objections to the FRC and raised a host of new claims. (*See generally* Doc. 67.)

On June 10, 2025, Plaintiffs filed a motion to amend the pending motion for reconsideration. (Doc. 71.) Therein, they argued that because Defendants indicated that it was opposed to their motion for reconsideration, but did not file a brief, the motion for reconsideration should be deemed unopposed. (*Id.*) Based on a May 6, 2025, email from a former AUSA that she would not be responding to pending motions, Plaintiffs did not confer with the AUSA on this motion. (*Id.* at 8.)

The undersigned AUSA entered an appearance in this case on June 13, 2025. (Doc. 72.) Mr. Carr emailed the undersigned that same day inquiring whether she would take the same position of “no response” as the former AUSA. The undersigned inadvertently failed to respond to that email. Plaintiffs filed the instant omnibus motion for reconsideration on ten days later, on June 23, 2025. (*Id.*) Mr. Carr did not seek to confer on this specific motion but indicated in the certificate of conference that the motion was “unopposed” based on the correspondence with the former AUSA and the nonresponse to the June 13th email. (*Id.* at 65.)

II. Legal Standards

Plaintiffs presumably seek to have their consolidated motions considered under Federal Rules of Civil Procedure 59(e) and 60. (Doc. 73 at 9.) To prevail under Rule 59(e), a motion “must clearly establish either a manifest error of law or fact or must

present newly discovered evidence and cannot be used to raise arguments which could, and should, have been made before the judgment issued.” *See Matter of Life Partners Holdings, Inc.*, 926 F.3d 103, 128 (5th Cir. 2019) (internal citation omitted). “The purpose of Rule 60(b) is to balance the principle of finality of a judgment with the interest of the court in seeing that justice is done in light of all the facts.” *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 638 (5th Cir. 2005). Under Rule 60(b)(1), a court may relieve a party from a final judgment for mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b)(1). Under Rule 60(b)(6), a party may seek relief “any other reason justifying relief from the operation of the judgment.” Relief under Rule 60(b)(6), however, is appropriate only in an “extraordinary situation” or when “extraordinary circumstances are present.” *U.S. ex rel. Garibaldi v. Orleans Parish Sch. Bd.*, 397 F.3d 334, 337 (5th Cir. 2005) (internal citations and quotation marks omitted).³

III. Argument

A party may serve and file objections to a non-dispositive magistrate judge’s order “within 14 days after being served with a copy.” Fed. R. Civ. P. 72(a). If objections are not filed within the 14-day period, the Court reviews the Magistrate Judge’s findings and recommendations only for plain error. *Serrano v. Customs & Border Patrol, U.S. Customs & Border Prot.*, 975 F.3d 488, 502 (5th Cir. 2020).

Here, the Magistrate Judge specifically explained that Plaintiffs had 14 days to object to any part of the FCR. (Doc. 61 at 8.) The Magistrate Judge also explained that failure to object would bar Plaintiffs from appealing the factual findings and legal conclusions reached by the court, except upon grounds of plain error. (*Id.*) Plaintiffs did

³ Plaintiff’s various motions for reconsideration do not specify any specific clause under Rule 60(b), but these are the only two clauses in Rule 60(b) that might pertain to their arguments.

not file objections within 14 days, and did not seek an extension of that deadline. Thus, review of the FCR was for plain error. *Serrano*, 975 F.3d at 502. This Court undertook that review and properly found no error in the FRC. (Doc. 62.)

To the extent Plaintiffs seek to set aside this Court's judgment, they were required to establish that the decision finding no plain error in the FCR was either a manifest error of law (Rule 59(e)), a mistake, inadvertence, surprise or excusable neglect (Rule 60(b)(1)), or an extraordinary situation compelling relief. Fed. R. Civ. P. 60(b)(6). Their consolidated motion fails to do so. Indeed, Plaintiffs fail to demonstrate this this Court erred in *any* manner by accepting the FCR. As the Magistrate Judge explained, Mr. Carr cannot represent his wife and sister-in-law in any manner in this litigation. (Doc. 61 at 1-2.) But that is exactly what Carr has been, and indeed continues undeterred, to do. (Doc. 73 at 61 (explaining that he received permission from Mrs. Carr and Mrs. Von Kramer to sign this document electronically on their behalf).) Carr's belief that the Constitution or common law of the United States or Thailand bestows upon "any immediate family [the right to] represent other family members (even family members extended through marriage) with their consent" (Doc. 73 at 17-23) is not an accurate statement of the law. *See* 28 U.S.C. § 1654. For that reason, dismissal of claims that Carr could not bring on behalf of his wife and sister-in-law was not error.⁴

The same is true with respect to the only claims Carr alleged on his own behalf, namely the late arrival of his package and alleged failures to properly investigate a refund he claims he did not receive. As the Magistrate Judge explained, these claims are barred by sovereign immunity or were improperly briefed. (Doc. 61 at 6-7). Carr has not, and

⁴ Plaintiffs argue that the dismissal of Mrs. Carr and Mrs. Van Kramer's claims was a "sanction" for failing to sign the pleadings. (Doc. 72 at 12-14.) This is simply incorrect. The claims were dismissed because Mr. Carr could not legally bring them on behalf of his family members.

cannot, show plain error in these conclusions. That is because sovereign immunity *does* bar his claim for damages for negligent transmission of the mail. *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 483-84, 489 (2006). And the Federal Rules only permit the incorporation by reference of contents from specified pleadings, not earlier motions or other papers. (Doc. 61 at 7.) Mr. Carr's attempt to incorporate by reference a response to earlier filed motion to dismiss, one dismissed as moot because he chose to file an amended complaint, was improper.⁵

IV. Conclusion

Plaintiffs cannot show any error, much less plain error, in the Magistrate Judge's RFC, or any basis under Rule 59(e) or Rule 60 for setting aside this Court's judgment. Their omnibus motion for reconsideration should be denied.

Respectfully submitted,

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⁵ Although his complaint has been dismissed, Mr. Carr's request for reconsideration raises new immigration and FOIA claims, and seeks to add two new defendants. (Doc. 73 at 37-42). He also seeks to raise complaints about the Court and the U.S. Attorney's Office. (*Id.* at 42-45, 45-48.) These requests and arguments are misplaced in a Rule 60 motion and should be rejected.

CERTIFICATE OF SERVICE

On July 14, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I also hereby certify that on this same date, the foregoing document was served via U.S. mail to the Plaintiff, pro se, listed below:

s/ Tami C. Parker
Tami C. Parker