

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 FOR FRCP RULE 15(A)(2) LEAVE TO
SUBMIT SECOND AMENDED COMPLAINT"**

Plaintiff Brian P. Carr, pro se and ostensibly representing his wife, Rueangrong Carr (hereinafter Mrs. Carr), and Mrs. Carr's sister, Buakhao Von Kramer, now moves for leave to file a third amended complaint. (Doc. No. 76 (hereinafter "Motion").) His 24-page motion seeks not just leave to file another amended complaint, but also various forms of miscellaneous relief, to include requiring the Defendants to (1) answer the proposed 87-page complaint within 14 days, (2) address Plaintiff's "due process" concerns with respect to being given only 14 days to file objections to the Magistrate Judge's Findings, Conclusions and Recommendation (Motion at 3), and (3) demand that the Court "promptly" decide the numerous Fed. R. Civ. P. 60 motions filed by Carr since judgment was entered on March 21, 2025. (*Id.* at 4). Plaintiff also seeks to continue representing his family as additional plaintiffs in this case, having interpreted this Court's local rules to mean that he is "attorney" and thus can sign pleadings on behalf of other plaintiffs. (*Id.*) Plaintiff also ask this Court for leave to file an amended complaint which

seeks to correct all cited defects, add new counts and new plaintiffs, and add new defendants.” (Doc. 73 at 4.)¹ Plaintiff’s motion should be denied.

I. Procedural Background

Plaintiff filed his family’s complaint on December 29, 2023 (Doc. 3.) Defendants, the United States of America and several other federal agencies, filed a motion to dismiss. (Doc. 15.) After responding to that motion (Doc. 18), Plaintiffs filed an amended complaint on April 24, 2024. (Doc. 29.) That amended complaint is the operative complaint in this case.

In the amended complaint, Plaintiff sought damages from the United States Postal Service (USPS) for an allegedly delayed delivery of a package and alleged failure to pay for that late delivery. (Doc. 29 at 2, 7-9.) Plaintiff also complained that various federal defendants failed to investigate, or refer for possible investigation and criminal prosecution, those officials responsible for the non-payment. (*Id.* at 9-11.) The amended complaint also sought an order from the Court mandating that various federal agencies, including the U.S. Department of Justice, initiate 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 12-45.) According to Plaintiff, the process was procedurally infirm and dishonest, but no one would address his complaints. (*Id.*)

Defendants filed a second motion to dismiss. (Doc. 31.) As explained therein,

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.

Plaintiffs did not meet their initial burden to identify an applicable waiver of the federal government's sovereign immunity for any of their claims. (*See generally, id* at 5.) Defendants explained that Plaintiff's claim regarding the alleged delivery of his mail was barred by 28 U.S.C. 2680 (*id.* at 6), his claims related to the naturalization process were proper only under the regime established by the naturalization statutes (*id.* at 6-7), and Plaintiff's family's claims related to visas was barred by the doctrine of consular nonreviewability. (*Id.* at 8-9.) Plaintiff objected to the motion to dismiss primarily with unsupported argument, but also citing, in part, the Administrative Procedures Act, 5 U.S.C. § 701, *et. seq.*, and 8 U.S.C. § 1421(c), as waivers of sovereign immunity. (*See generally* Doc. 34). In response, Defendants explained that Plaintiff failed to demonstrate that any of the numerous actions about which Plaintiff complained were the sort of non-discretionary actions contemplated by the APA. (Doc. 41 at 1-2.) Defendantd further explained that Plaintiff and his family had not availed themselves of the remedies provided under the naturalization statutes. (*Id.* at 3-4).

On February 27, 2025, Magistrate Judge Rutherford entered Findings, Conclusions, and Recommendations of the United States Magistrate Judge. (Doc. 61). Therein, Magistrate Judge Rutherford explained that Mr. Carr, proceeding pro se, was essentially and impermissibly representing his wife and sister-in-law. (Doc. 61 at 1-3.) Because Mr. Carr was not authorized to give legal advice or sign pleadings on behalf of others,² Magistrate Judge Rutherford recommended that his family's claims be dismissed. She further explained that Plaintiff failed to identify a waiver of sovereign

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").

immunity that would permit the claims he raised on his own behalf. (*Id.* at 5-6). For those reasons, the Magistrate Judge issued recommending dismissal of the complaint. (Doc. 61.) No objections were filed, and this Court, having 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, Plaintiff and his family began filing various pleadings and motions seeking 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.) Plaintiff filed multiple pleadings complaining that he and his family were not given adequate time to prepare objections to the FCR and that the rules regarding how pro se plaintiffs should electronically sign pleadings was vague (*See generally* Docs. 67, 68, 71, 73.) For the most part, these documents reargue the same objections to dismissal. (*Id.*)

Having failed to obtain the relief he seeks through various post-judgment motions, Plaintiff and his family now move again for leave to amend their complaint. (Doc. 49.) Plaintiff explains that, as he construes this Court's local rules, he *is* in fact an attorney and thus capable of representing his family. (Doc. 76 at 4-5.) He seeks to reassert the dismissed claims, including those of his family, make additions and corrections based on events that occurred after the complaint was filed, correct typographical and clerical errors, and clarify some of his claims. (*Id.* at 5-6.)

Legal Standards

Plaintiff seeks to have this latest motion considered under Federal Rule of Civil Procedure 60. (Doc. 73 at 9.) 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 “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).

Plaintiff also seeks leave to file to another amended complaint, citing Fed. R. Civ. P. 15. (Doc. 76 at 2.) A party may automatically amend its pleadings once as a matter of course. *See* Fed. R. Civ. P. 15(a)(1); *see also Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d 194, 203 (7th Cir. 1985) (explaining that a party is only allowed to amend his pleading once under the Federal Rules but must seek leave to further amend). Once a party has amended its pleadings, a party may further amend its pleadings “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2).

The Rules provide leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). However, leave to amend is “by no means automatic.” *Addington v. Farmer’s Elevator Mut. Ins. Co.*, 650 F.2d 663, 666 (5th Cir. Unit A), cert. denied, 454 U.S. 1098 (1981). Instead, the decision to grant or deny leave is one left to the sound discretion of this Court. In deciding whether leave should be granted, district courts can consider factors such as “undue delay, bad faith or dilatory motive on the part of the

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.

movant, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party ... [and] futility of amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). As the Fifth Circuit has explained, denying a motion to amend is not an abuse of discretion if allowing an amendment would be futile. *Briggs v. Miss.*, 331 F.3d 499, 508 (5th Cir. 2003).

II. Argument

A. Plaintiff is not entitled to relief under Rule 60.

Plaintiff continues to ask this Court to set aside the judgment in this case. But Plaintiff fails in this motion, as in all his previous Rule 60 motions, to demonstrate that this is an extraordinary situation that entitles him to such relief. Plaintiff’s complaint was dismissed in part because, as a non-attorney, he could not represent the interests of his family members in federal court. It was also dismissed in part because Plaintiff failed to demonstrate a waiver of sovereign immunity. There was not extraordinary about that dismissal.

Plaintiff’s motions, to include the instant motion, essentially urge this Court to set aside the judgment because Plaintiff did not understand that he only had 14 days to file objections to the FCR, and that he was prejudiced because the FCR did not make that clear in the body of the recommendation.⁴ Plaintiff believes that had he had a chance to present his objections to the FCR, he would have refuted the Magistrate Judge’s

⁴ Plaintiff complains complications coordinating the objections with one of the overseas putative plaintiffs, coupled with his failure notice the Magistrate Judge’s notice at the end of the FCR regarding a deadline to file objections, created unacceptable prejudice him as a pro se plaintiff. (.) He offers his opinions as to where this information should be provided in the FCR as to comply with due process and not prejudice pro se defendants. (.) But this Court specifically notified Carr at the start of this litigation that in choosing to proceeding pro se, he “must read and follow the Federal Rules of Civil Procedure (FRCP), this court’s Local Civil Rules, and the orders entered by a judge in your case.” (Doc. 2 at 1.). Both the Federal Rules and the FCR in this case explained to Carr that he had 14 days to file objections to the FCR. A pro se plaintiff’s ignorance of the rules or failure to read a court’s order is not a basis for relief under Rule 60.

conclusions that his complaint should be dismissed. But Plaintiff is wrong. 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.⁵

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 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 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.

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.” Plaintiff’s motion fails to demonstrate that either of these grounds for relief are present in this case.

B. Plaintiff’s motion for leave to file an amended complaint should be denied.

Because Plaintiffs’ proposed amendment would not resolve the reasons why their claims should be dismissed, Plaintiffs should not be allowed to file their second amended complaint. An amendment is deemed futile when “the amended complaint would fail to state a claim upon which relief could be granted.” *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 873 (5th Cir. 2000). As a result, leave to amend does not need to be granted when the amended complaint would not defeat a motion to dismiss. *Id.*; *see also Briggs v. Miss.*, 331 F.3d 499, 508 (5th Cir. 2003) (affirming denial of motion for leave to amend as the proposed amended complaint “could not survive a Fed. R. Civ. P. 12(b)(6)

As an initial matter, Plaintiff not only continues his representation of his wife and sister-in-law, but he also now seeks to add two new plaintiffs: his wife’s older children who are citizens and residents of Thailand. (Doc. 76-1 at 7-9.) But as the Magistrate Judge carefully explained in the FCR, Plaintiff, a non-lawyer, is not permitted to represent others in court. (Doc. 61 at 2-3.) Plaintiff provides his own interpretation of the law based on his reading of this Court’s local rules (Doc. 76 at 4-5), but his reading does not change the well-established law that pro se plaintiffs must conduct their cases personally. (*Id.*)⁶ Leave to file an amended complaint can be granted on that basis alone.

⁶ The FCR recommended dismissal of Plaintiff’s wife and sister-in-law without prejudice, and this Court adopted that recommendation. As such, these putative plaintiffs were free to file their own complaints, bearing their own signatures, to press any grievances they have with the immigration process.

Moreover, Defendants have articulated multiple reasons why dismissal of Plaintiffs' claims is appropriate. (*See* Doc. 31 (motion to dismiss first amended complaint), Doc. 41 (reply to motion to dismiss first amended complaint).) In short, Plaintiff, who bears the burden of demonstrating an applicable waiver of sovereign immunity, wholly fails to do so. (*Id.*) To address that concern, Plaintiff lists a number of federal statutes in the proposed amended complaint.⁷ But it is not sufficient for Plaintiffs to merely lists federal statutes that may contain a waiver of sovereign immunity. Plaintiff must allege facts sufficient to state a plausible claim that a waiver exists. Plaintiffs' proposed third amended complaint fails to meet this burden. The claims set forth therein, such as complaints regarding the failure to investigate his complaints would not resolve the lack of subject-matter jurisdiction or failure to state a claim.⁸ As such, Plaintiff's motion to amend his complaint should be denied as futile.

C. Plaintiff is not entitled to any of the other relief he seeks.

Last, Plaintiff seeks to have the Defendants answer the proposed 87-page complaint within 14 days and address Plaintiff's "due process" concerns with respect to

⁷ See Doc. 76-1 at 7 (asserting that [t]his Court has subject matter jurisdiction over this action pursuant to 28 USC § 1331 and 28 USC § 1367, 42 USC Ch. 21B, Administrative Procedure Act (APA, 5 USC § 551–559, 5 USC § 702), and 28 USC Chap 171 (FTCA) as a case arising under 18 USC § 1001, 18 USC § 1505, 18 USC § 1510, 18 USC § 201, 18 USC Ch 96 (RICO), 18 USC § 1038 18 USC § 10, 5 USC § 404 (IG Act of 1978), 5 USC § 424 CIGIE, 39 USC (Postal Service), INA 8 USC Ch 12, 8 CFR § 216.4, 5 USC § 2302(b)(9)(D), 8 USC § 1184, 8 USC § 1146, 8 USC § 1447, 8 USC § 1421(c), 8 CFR Part 1292.1, 5 USC § 552 FOIA, 5 USC § 2302, 26 USC Internal Revenue Code, 26 USC § 6331, 26 USC § 7803, 28 USC Part II - Department Of Justice as well as the Fifth Amendment of the U.S. Constitution right to due process.

⁸ Plaintiff appended multiple "mini" briefs to his many Rule 60 motions, providing additional arguments and support for his alleged claims. (*See, e.g.*, Docs. 75-2, 67-3.) Although the Magistrate Judge explained to Plaintiff in the FCR that a party is not permitted to incorporate by reference contents from other pleadings and earlier motions, (FCR at 7), Plaintiff, in his 87-page proposed complaint, incorporates by reference several of these briefs, including briefs with Plaintiff's arguments attempting to overcome sovereign immunity. *See, e.g.*, (Doc. 76-1 at 12-13 (Doc. 75-2, 67-3).) Nothing in those briefs provide a plausible waiver of sovereign immunity in this case.

being given only 14 days to file objections to the Magistrate Judge's Findings, Conclusions and Recommendation (Motion at 3). But the Federal Rules already provide a 14-day period for a party to respond to an amended complaint. Fed. R. Civ. P. 15. And Plaintiff's due process concerns with respect to the time period for responding to a FCR are without merit. This Court directed Plaintiff at the outset of this case that he needed to read the Federal Rules of Civil Procedure and the court's orders. Both identify the 14-day window. Plaintiff's failure to read the rules or the FCR in its entirety does not implicate due process. And if he needed additional time, Plaintiff could have filed a motion seeking that time. He did not do so.

With respect to demanding that this Court "promptly" decide the numerous Fed. R. Civ. P. 60 motions filed by Carr since judgment was entered on March 21, 2025 (Doc. 76-1 at 4), Defendant respectfully declines. Plaintiff provides no reason to expedited his case over the hundreds of cases pending in this Court, and he has unnecessarily burdened the process by filing multiple, lengthy, motions, with attached sub-briefs. And because is simply wrong that a definition in this Court's local rules has made him "attorney" capable of signing pleadings on behalf of other plaintiffs. (*Id.*)

III. Conclusion

Plaintiffs cannot show any error, much less plain error, in the Magistrate Judge's RFC, or any basis for setting aside this Court's judgment. The Rule 60 motion for leave to file an amended complaint should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On September 17, 2025, 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