

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-15656
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT AUGUST 16, 2010 JOHN LEY CLERK
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D. C. Docket No. 09-00527-CV-2-MEF-SRW

KENNETH GENE WALL,

Plaintiff-Appellant,

versus

ANITA DENISE WALL,
a.k.a. Anita Denise Griffith,
JOHN B. BUSH, in his individual
and official capacities,
SIBLEY G. REYNOLDS, in his
individual and official capacities,
CAROL "FAIN" BUSH,
PAUL HIEBEL,
in his individual and official capacities,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Alabama

(August 16, 2010)

Before WILSON, PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

Kenneth Wall appeals pro se the denial of his motion to alter or amend the judgment that dismissed his complaint that he was denied a fair divorce hearing because of a conspiracy between his former wife, Anita Wall, Judges John Bush and Sibley Reynolds, court reporter Carol Bush, and Family Court Referee Paul Hiebel. 42 U.S.C. §§ 1983, 1985. Wall moved to alter or amend on the ground that he had not received a copy of the report and recommendation of the magistrate judge that the district court had adopted. The district court denied Wall's motion, and we affirm.

The district court did not abuse its discretion by denying Wall's motion to alter or amend. The magistrate judge directed the clerk to serve Wall a copy of the report and recommendation, see Fed. R. Civ. P. 72(b)(1), and that "service [was] complete upon mailing," Fed. R. Civ. P. 5(b)(2)(C). There is a presumption that an item mailed has been received, Barnett v. Okeechobee Hosp., 283 F.3d 1232, 1239 (11th Cir. 2002), and Wall failed to submit sufficient evidence to rebut that presumption. Although Wall alleged that he did not receive the report and recommendation, he offered nothing more than his bare assertion to overcome the presumption. See id. at 1241. The clerk mailed the report and recommendation to

the address provided by Wall, and the report was not returned as undeliverable by postal officials. Wall also had received documents mailed previously to that same address. Wall also failed to explain what objections, if any, he would have filed had he received the report earlier, nor has Wall offered any explanation on appeal.

We **AFFIRM** the denial of Wall's motion to alter or amend.