[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11670
Non-Argument Calendar

D.C. Docket No. 1:17-cv-20128-RNS

FRANK GONZALEZ,

Plaintiff - Appellant,

versus

CITY OF HIALEAH,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(January 17, 2019)

Before WILLIAM PRYOR, ANDERSON, and EDMONDSON, Circuit Judges.

PER CURIAM:

Plaintiff Frank Gonzalez, proceeding pro se,[1] appeals the district court's denial of Plaintiff's motion for relief from judgment, filed pursuant to Federal Rule of Civil Procedure 60(b)(3) and (b)(6).[2] Plaintiff also appeals the district court's grant of the City of Hialeah's ("City") motion for costs under Rule 54(d)(1). No reversible error has been shown; we affirm.

This case arises from the termination of Plaintiff's employment as a police officer with the City. Plaintiff filed a civil action against the City in state court, which was later removed to federal district court. The district court dismissed Plaintiff's federal claims for failure to state a claim and remanded Plaintiff's state law claims to state court.

In an earlier appeal (case number 17-14041), this Court affirmed the district court's dismissal of Plaintiff's complaint. See Gonzalez v. City of Hialeah, No. 17-14041, 2018 U.S. App. LEXIS 21104 (11th Cir. July 31, 2018). Among other things, we concluded that Plaintiff -- as a probationary employee -- lacked a protected property interest in his continued employment and, thus, failed to state a

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[1] We construe liberally pro se pleadings. Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

[2] Plaintiff also sought relief under Rule 60(d)(3). Because Plaintiff's motion was filed within one year of judgment, we review the motion under the less-stringent standard applicable to Rule 60(b)(3) motions. See Rozier v. Ford Motor Co., 573 F.2d 1332, 1337-38 (5th Cir. 1978).

claim for a violation of his procedural due process rights based on the termination of his employment. Id. at *6-7.[3]

While Plaintiff's appeal in case number 17-14041 was still pending in this Court, the district court ruled on the two post-judgment motions at issue in this appeal.

Motion for Relief from Judgment

Plaintiff filed a motion for relief from judgment pursuant to Rule 60(b)(3) and (b)(6). Briefly stated, Plaintiff contended that the City engaged in fraud and misrepresentation that induced the district court to dismiss improperly the federal claims in his complaint. In particular, Plaintiff says that the City withheld evidence during discovery about Plaintiff's probationary employment status.

We review the district court's denial of a Rule 60(b) motion for an abuse of discretion. Willard v. Fairfield S. Co., Inc., 472 F.3d 817, 821 (11th Cir. 2006). To prevail on a Rule 60(b)(3) motion, a party must prove by clear and convincing evidence that an adverse party obtained a judgment through fraud,

[3] To the extent Plaintiff now raises arguments challenging the district court's dismissal of his complaint, those arguments are outside the scope of this appeal. Moreover, because we have already affirmed the dismissal of Plaintiff's complaint in case number 17-14041, Plaintiff is now barred from re-litigating those issues. For background, see This That & the Other Gift & Tobacco, Inc. v. Cobb Cnty., Ga., 439 F.3d 1275, 1283 (11th Cir. 2006) (discussing application of the law-of-the-case doctrine).

misrepresentation, or other misconduct. Frederick v. Kirby Tankships, Inc., 205 F.3d 1277, 1287 (11th Cir. 2000). "The moving party must also show that the conduct prevented the losing party from fully and fairly presenting his case or defense." Id.

The district court abused no discretion in denying Plaintiff relief under Rule 60(b)(3). Plaintiff failed to demonstrate -- by clear and convincing evidence -- that the City committed fraud or misrepresentation on the district court.

In support of his motion, Plaintiff submitted an email sent by a police officer to a commanding officer, which contains this single sentence: "Commander, per Mercedes Gonzalez of Human Resources Officer Frank Gonzalez's probation will end on February 5, 2009." ("December 2008 email"). Plaintiff's chief argument is that the December 2008 email demonstrates that the City had in its possession other documents pertaining to Plaintiff's probationary employment status that the City withheld improperly during discovery.

Plaintiff's speculation about the existence of other unidentified discoverable documents constitutes no "clear and convincing evidence" of misconduct. Moreover, the record demonstrates that Plaintiff learned about the December 2008 email before the district court ruled on the City's motion to dismiss and, thus, Plaintiff had an opportunity to "fully and fairly" present his case in the district court.

Plaintiff has also failed to demonstrate "exceptional circumstances" that would warrant relief under Rule 60(b)(6). See Griffin v. Swim-Tech Corp., 722 F.2d 677, 680 (11th Cir. 1984) (noting that relief under Rule 60(b)(6) "is an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances" and requires a showing that, absent relief, the losing party will suffer "extreme and unexpected hardship." (quotations omitted)).

Motion for Costs

After the district court dismissed with prejudice Plaintiff's complaint, the City filed a motion for costs. The City sought a judgment against Plaintiff for $400: the cost of the filing fee incurred by the City upon removal to federal court. In response, Plaintiff contended that costs should be denied because the City failed to serve him timely with a copy of the motion. The City replied that it attempted to serve Plaintiff via email but, due to a computer error, the email was not successfully transmitted. When the City learned of the problem, the City sent Plaintiff another service email and agreed to allow Plaintiff extra time to respond. The City also provided evidence demonstrating that Plaintiff had earlier been notified of -- and said he had no objection to -- the City's plan to seek costs.

A magistrate judge recommended granting the City's motion for costs, concluding that the City was the prevailing party and that the fee was reasonable and recoverable. About timeliness, the magistrate judge construed the City's reply brief as a request to extend the service deadline nunc pro tunc to accommodate the computer error. Because the computer error was beyond the City's control and because Plaintiff had an adequate opportunity to respond, the magistrate judge concluded that the City's neglect was excusable and that an extension of time was warranted under Fed. R. Civ. P. 6(b). The district court overruled Plaintiff's objections, adopted the magistrate judge's recommendation, and awarded the City $400.

We review a district court's decision about costs under an abuse-of-discretion standard. Chapman v. AI Transp., 229 F.3d 1012, 1039 (11th Cir. 2000).

The district court abused no discretion in awarding costs in favor of the City. That the City was the prevailing party in the district court is undisputed. Nor does Plaintiff object to the amount of the cost award or to the district court's determination that the court filing fee was a recoverable expense.

We reject Plaintiff's argument that the district court failed to explain sufficiently its decision. The district court adopted in full the magistrate judge's report and recommendation after considering Plaintiff's objections, the record, and

the pertinent legal authorities. The district court need not set out a separate analysis.

We also reject Plaintiff's contention that the district court erred in construing the City's reply brief as a motion for an extension of time. The City explained in its reply brief that it was unaware of its failure to serve Gonzalez properly until after Gonzales filed his response to the City's motion for costs. We have said that district courts have "unquestionable" authority over their own dockets, including "broad discretion in deciding how best to manage the cases before them." Smith v. Psychiatric Sols., Inc., 750 F.3d 1253, 1262 (11th Cir. 2014). We cannot say that the district court acted outside the scope of its authority by resolving the City's untimely service, particularly given that Plaintiff had in fact received prior notice of (and indicated no objection to) the City's intent to seek costs.

AFFIRMED.