[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-11158

Non-Argument Calendar

In re: HOWARD W. RUBINSTEIN,

Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:18-mc-25055

Before GRANT, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

This appeal is the third in a series of appeals related to Mr. Rubinstein's disciplinary action. *See In re Rubinstein (Rubinstein I)*, 756 F. App'x 892 (11th Cir. 2018); *In re Rubinstein (Rubinstein II)*, 845 F. App'x 910 (11th Cir. 2021) (mem.). Rubinstein argues that on the same day the mandate of his second appeal was issued to the district court, the district court entered an Order of Disbarment against him but failed to provide him notice that the order was entered. As a result, Rubinstein claims he only discovered the order eight months later when he was making plans to seek readmission. Rubinstein brought a motion under Rule 60(b) to vacate the order and re-enter the order such that he could then file a timely appeal or, in the alternative, allow him the opportunity to present argument to the district court in the first instance. The district court denied his motion, and Rubinstein appealed. For the reasons below, we agree with the district court and affirm.

Appellate review of an appeal from a Rule 60(b) motion "is limited to whether the district court abused its discretion in denying the motion." *Tessmer v. Walker*, 833 F.2d 925, 926 (11th Cir. 1987). Rubinstein argues that because the district court is attempting to discipline him here, the district court is the adverse party. Thus, Rubinstein contends, we should review the district court's ruling *de novo*. But we "review a district court's disbarment order only for abuse of discretion." *In re Calvo*, 88 F.3d 962, 967 (11th Cir. 1996). Regardless, we need not decide whether this

unique posture alters our standard of review because, under either standard, we would affirm.

Federal Rule of Civil Procedure 60(b) and Federal Rule of Civil Procedure 77(d) are the key provisions for this appeal. Federal Rule of Civil Procedure 60(b) allows a court to "relieve a party or its legal representative from a final judgment, order, or proceeding" for, among other reasons, "mistake, inadvertence, surprise, or excusable neglect." Federal Rule of Civil Procedure 77(d)(1) requires that the clerk of the court "serve notice of the entry" of an order of judgment. But, the Rule provides, "[l]ack of notice of the entry does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed." Fed. R. Civ. P. 77(d)(2). Despite this language, we have held that while lack of notice alone is insufficient for granting a Rule 60(b) motion, "it is nevertheless a circumstance which may militate in favor of granting such a motion, when coupled with certain other considerations." *Tessmer*, 833 F.2d at 927; *Zurich Ins. Co. v. Wheeler*, 838 F.2d 338, 340 (9th Cir. 1988) (holding same).

Here, Rubinstein argues that the clerk's failure to provide notice constitutes excusable neglect. But Rubinstein rests his argument solely on the lack of notice, which "does not affect the time for appeal or relieve—or authorize the court to relieve—a party for failing to appeal within the time allowed." Fed. R. Civ. P. 77(d)(2). In *Tessmer*, where we granted a Rule 60(b) motion, the clerk not only failed to provide notice of the order, but

Tessmer's counsel also made monthly telephone inquiries to the clerk to monitor the status and was repeatedly told incorrect information regarding the status of the order. *Tessmer*, 833 F.2d at 927. Similarly, in *Zurich*, the clerk failed to provide notice and incorrectly "told counsel that the order had not been entered." *Zurich*, 838 F.2d at 340. In contrast, Rubinstein does not argue that he or his attorney was similarly diligent in calling the clerk or monitoring the docket. In other words, Rubinstein fails to assert any "other considerations" that would weigh in favor of granting his Rule 60(b) motion. *Tessmer*, 833 F.2d at 927. Rubinstein instead only argues that the clerk failed to notify him. But "[t]his court has held consistently that the clerk's failure to provide notice of the entry of a judgment is not itself sufficient grounds for the vacation of that judgment under Rule 60(b)." *Id.* at 926. Accordingly, we affirm.

AFFIRMED.