[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 24-11222

Non-Argument Calendar

ANGEL LIA RICHITELLI,

Plaintiff-Appellant,

versus

UNITED STATES POSTAL SERVICE,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:21-cv-62202-JMS

Before ROSENBAUM, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Angel Richitelli, proceeding *pro se*, appeals the magistrate judge's denial of her Rule 60(b) motion to vacate the grant of summary judgment in favor of the United States ("the government") on her claim of negligence pursuant to the Federal Tort Claims Act ("FTCA"). She argues that the magistrate judge abused his discretion because she presented newly discovered evidence that defeated the government's claims and would have precluded summary judgment if discovered prior to the judgment. The government has moved for summary affirmance, arguing that the magistrate judge did not err in denying the Rule 60(b) motion because Richitelli failed to strictly meet the requirements of due diligence and materiality.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). "A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it." Fed. R. App. P. 27(a)(2)(A).

We review the denial of a Rule 60(b) motion for an abuse of discretion. *Am. Bankers Ins. Co. of Fla. v. Nw. Nat'l Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999). "A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous." *Aycock v. R.J. Reynolds Tobacco Co.*, 769 F.3d 1063, 1068 (11th Cir. 2014) (quotation marks omitted). "[T]o overturn the district court's denial of [Rule 60(b) motions], it is not enough that a grant of the motions might have been permissible or warranted; rather, the decision to deny the motions must have been sufficiently unwarranted as to amount to an abuse of discretion." *Griffin Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984).

Under Federal Rule of Civil Procedure 60(b)(2), a party may move for relief from a final order if there is "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." Fed. R. Civ. P. 60(b)(2). "The purpose of a Rule 60(b) motion is 'to permit the trial judge to reconsider . . . matters so that he can correct obvious errors or injustices and so perhaps obviate the laborious process of appeal.'" *Carter ex rel. Carter v. United States*, 780 F.2d 925, 928 (11th Cir. 1986) (quotation marks omitted, alteration in original). A Rule 60(b) motion is intended "only for extraordinary circumstances" and the requirements of the rule must be strictly met. *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1316 (11th Cir. 2000) (quotation marks omitted) (holding that, while there may be circumstances in which the emergence of new scientific evidence would warrant a

new trial, the movant did not show that the evidence would have produced a different result, and the evidence was cumulative or impeaching).

The moving party must meet the following five-part test: (1) the evidence must be newly discovered since the trial; (2) the movant used due diligence to discover the new evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that a new trial would probably produce a new result. *Id.*

"A motion for reconsideration cannot be used to . . . raise argument or present evidence that could have been raised prior to the entry of judgment." *Cummings v. Dep't of Corr.*, 757 F.3d 1228, 1234 (11th Cir. 2014) (quotation marks omitted). "Unexcused failure to produce the relevant evidence . . . can be sufficient, without more, to warrant the denial" of such a motion. *See Taylor v. Texgas Corp.*, 831 F.2d 255, 259 (11th Cir. 1987)

We will hold *pro se* pleadings to a less stringent standard and will liberally construe them. *Campbell v. Air Jam., Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). But we will not "serve as *de facto* counsel for a party [or] rewrite an otherwise deficient pleading in order to sustain an action." *Id.* at 1168–69. In counseled cases, "clients are to be held accountable for the acts and omissions of their attorneys." *Young v. City of Palm Bay, Fla.*, 358 F.3d 859, 864 (11th Cir. 2004); *see also Dos Santos v. United States Att'y Gen.*, 982 F.3d 1315, 1319 (11th Cir. 2020) ("[I]t has long been understood that a party who voluntarily chose an attorney to represent her cannot later

choose to avoid the consequences of the acts or omissions of this freely selected agent." (quotation marks omitted)).

Here, the magistrate judge did not abuse his discretion by denying Richitelli's motion to vacate under Rule 60(b)(2) because Richitelli provides no convincing explanation as to why the newly produced evidence could not have been proffered at an earlier stage in the proceedings. Her lack of due diligence and failure to produce the evidence prior to the entry of judgment is dispositive. Richitelli and her mother waited four years after the incident, two years after filing suit, and eight months after entry of judgment to begin seeking accounts of similar incidents at the collection box. She failed to adequately explain the lack of diligence. Thus, the government's position is clearly correct as a matter of law.

Accordingly, we GRANT the government's motion for summary affirmance.