

4 of 21 DOCUMENTS

CHARLES ISELEY, SR., ET AL., Plaintiffs, v. MARTIN DRAGOVICH, ET AL., Defendants.

CIVIL ACTION NO. 00-4839

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

2004 U.S. Dist. LEXIS 9683

May 24, 2004, Filed

SUBSEQUENT HISTORY: Related proceeding at *Iseley v. Talaber*, 2007 U.S. App. LEXIS 12160 (3d Cir. Pa., May 23, 2007)

PRIOR HISTORY: *Iseley v. Dragovich*, 2004 U.S. App. LEXIS 1898 (3d Cir. Pa., Jan. 6, 2004)

DISPOSITION: Plaintiff's motion for relief from judgment denied.

COUNSEL: [*1] CHARLES ISELEY, SR., Plaintiff, Pro se.

For MARTIN DRAGOVICH, MARTIN HORN, CAROL DOTTER, ROBERT BITNER, MARVA CERULLO, JOHN DOE, ABC INC., XYZ INC., DENTAL INC., LT. HENRICKSON, JANE DOE, FRANK GILLIS, KANDIS DASCANI, MOE, JANE DANDO, JANE HIMMAN, Defendants: PATRICK J. MCMONAGLE, OFFICE OF ATTORNEY GENERAL, PHILADELPHIA, PA. SUE ANN UNGER, OFFICE OF ATTORNEY GENERAL, LITIGATION SECTION, PHILADELPHIA, PA.

For RENATO DIAZ, LASZLO KIRALY, BRAD LORAH, Defendants: ALAN S. GOLD, SEAN ROBINS, GOLD BUTKOVITZ & ROBINS, ELKINS PARK, PA.

For CORRECTIONS PHYSICIAN SERVICES INC., Defendant: ALAN S. GOLD, GOLD BUTKOVITZ & ROBINS, ELKINS PARK, PA.

For SUSAN, WILLIAM SEWELL, Defendants: PATRICK J. MCMONAGLE, OFFICE OF ATTORNEY

GENERAL, PHILADELPHIA, PA.

JUDGES: EDUARDO C. ROBRENO J.

OPINION BY: EDUARDO C. ROBRENO

OPINION

ORDER

AND NOW, on this **24th** day of **May 2004**, it is hereby **ORDERED** that plaintiff's motion for relief from judgment pursuant to *Fed. R. Civ. P. Rule 60* (doc. no. 152) is **DENIED**.¹

¹ In *Iseley v. Dragovich*, 2004 U.S. App. LEXIS 1898, at *1 (3d Cir. Jan. 6, 2004), the Court of Appeals for the Third Circuit ("Third Circuit"), in a non-precedential opinion, affirmed this Court's grant of summary judgment in favor of defendants and against plaintiff on all of plaintiff's 42 U.S.C. § 1983 claims. Plaintiff now raises the following eight arguments in support of his *Rule 60* motion: (1) the Third Circuit lacked jurisdiction over plaintiff's appeal because plaintiff's notice of appeal was filed before disposition of plaintiff's motion for reconsideration; (2) defendants made misrepresentations to the Court concerning whether plaintiff could receive medical care for his hepatitis C condition (HCV) without the need for a waiver; (3) defendants made misrepresentations to the Court concerning the use of vitamins for treating HCV, the need for a psychological evaluation prior to HCV treatment,

and the severity and treatment of plaintiff's asthma condition; (4) the Court failed to address issues in plaintiff's amended complaint; (5) plaintiff was denied adequate discovery and an opportunity to file a renewed opposition brief; (6) the Court improperly used the "reasonable relationship test" to dismiss plaintiff's claims; (7) plaintiff had an *Eighth Amendment* right to be protected from harm caused by HCV; and (8) defendants misrepresented the side effects of interferon HCV treatment.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under *Rule 59(b)*; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. *Selkridge v. United of Omaha Life Ins. Co.*, 360 F.3d 155, 173, 45 V.I. 712 (3d Cir. 2004)(citing *Rule 60(b)*).

Plaintiff's first argument was specifically addressed by the Third Circuit when it declined to remand plaintiff's motion for reconsideration because, in the Third Circuit's opinion, doing so would be futile. Slip Op. at 3. A district court is not free to "flout" the decision of the appellate court in its consideration of a *Rule 60* motion, filed after appellate review. *See* 11 Wright, Miller & Kane, *Federal Practice and Procedure* § 2873 (1995). Accordingly, the Court will not revisit issues "laid at rest" by the appellate court. *SEC v. Advance Growth Capital Corp.*, 539 F.2d 649, 651 (7th Cir. 1976).

To the extent that plaintiff seeks to have the motion considered based upon the "newly discovered evidence" provision of *Rule 60*,

plaintiff has not demonstrated why the evidence he seeks to have the Court consider could not have been previously discovered through the exercise of due diligence. *Fed. R. Civ. P. 60(b)(2)*. In fact, the Court notes that much of the evidence which plaintiff cites in the instant motion (e.g., a 2001 Affidavit signed by Dr. Diaz, dated March 12, 2001; a medical release executed in January of 2000; an Affidavit signed by Dr. Kiraly, dated March, 16, 2001; and medical articles published in the Spring and Summer of 2001) predate this Court's December 2002 memorandum-order granting summary judgment in favor of defendants.

Finally, to the extent that plaintiff seeks to have the motion considered based upon fraud, misrepresentation or other misconduct by the defendants, *see Fed. R. Civ. P. 60(b)(3)*, plaintiff must provide clear and convincing evidence of any misconduct. *Brown v. Pennsylvania Railroad Co.*, 282 F.2d 522, 527 (3d Cir. 1960). Plaintiff has not met this high burden. Plaintiff's motion is nothing more than an attempt to challenge factual and legal assertions previously made by the defendants and challenge this Court's previous rulings on plaintiff's claims. The arguments are, in short, nothing more than an effort to relitigate plaintiff's claims. As such, plaintiff's motion is denied. *See Casey v. Albertson's Inc.*, 362 F.3d 1254, 1261 (9th Cir. 2004)(denying *Rule 60(b)* motion where it is clear that movant was relitigating issues on the merits); *Geo. P. Reintjes Co. v. Riley Stoker Corp.*, 71 F.3d 44, 49 (1st Cir. 1995)(same).

Plaintiff's motion to supplement the brief is denied for the same reasons.

[*2] It is **FURTHER ORDERED** that plaintiff's motion to supplement the brief (doc. no. 151) is **DENIED**.

It is **FURTHER ORDERED** that the case shall be **REMOVED** from **SUSPENSE** and marked as **CLOSED**.

AND IT IS SO ORDERED.

EDUARDO C. ROBRENO J