

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Rabb v. Figueroa

Rabb · No. 1:23-cv-00843 JLT SAB (PC) · Decided May 22, 2025

OPINION

(PC) Rabb v. Figueroa

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 DAMEN D. RABB, Case No. 1:23-cv-00843 JLT SAB (PC) 12 Plaintiff, INDICATIVE
RULING DENYING

PLAINTIFF’S MOTIONS FOR

13 v. RECONSIDERATION AND APPLICATION

FOR CERTIFICATE OF APPEALABILITY

14 ESTEVEN FIGUEROA, et al., (Docs. 96, 97, 98) 15 Defendants. 16 17 Damen Rabb is a state
prisoner who proceeded pro se in this civil rights action filed 18 pursuant to 42 U.S.C. § 1983,
seeking to hold Defendants Figueroa and Chavez liable for 19 violations of his rights under the
Eighth Amendment. After Plaintiff failed to participate in his 20 deposition—despite the Court
ordering Plaintiff to submit to the deposition— the Court found 21 terminating sanctions were
appropriate. (Docs. 89, 94.) The Court dismissed the action with 22 prejudice and entered
judgment on February 12, 2025. (Docs. 94, 95.) Plaintiff now seeks 23 reconsideration, requests
the Court vacate its prior order, and issue a certificate of appealability. 24 (Docs. 96, 97, 98.) 25
Notably, Plaintiff filed a notice of appeal the same day as the pending motions, as he 26 signed
both the motions and his notice of appeal on February 27, 2025; and the Court received the 27
documents on March 7, 2025. (See Doc. 96 at 1, 3; Doc. 97 at 1-2; Doc. 99 at 1-2.) In general, 28
the filing of a notice of appeal divests the court of jurisdiction “over those aspects of the case 1
involved in the appeal.” *Stein v. Wood*, 127 F.3d 1187, 1189 (9th Cir. 1997). However, courts 2
have indicated the simultaneous filing of a notice of appeal and a motion for reconsideration does
3 not divest a district court of jurisdiction. See *Sanders v. Matthew*, 2016 WL 11486352, at *1 n.1
4 (E.D. Cal. Mar. 9, 2016)); see also *Miller v. Marriott Int’l, Inc.*, 300 F.3d 1061, 1064 (9th Cir. 5
2002) (finding the plaintiff’s motions for reconsideration “prevented the notices of appeal from 6
becoming effective until the district court ruled on the merits of those motions”). Even if the 7
notice of appeal divests this Court of jurisdiction, Rule 62.1 of the Federal Rule of Civil 8
Procedure permits the Court to treat Plaintiff’s motions as a request for an indicative ruling. Fed. 9

R. Civ. P. 62.1(a); see also *Kajberouni v. Bear Valley Cmty. Servs. Dist.*, 2021 WL 1907606, at 10 *2 (E.D. Cal. Sept. 14, 2021) (observing “there is authority indicating that simultaneous filings do 11 not operate to divest a district court of jurisdiction,” but issuing an “indicative ruling” under Rule 12 62.1 in “an abundance of caution”) (emphasis in original); *Braun–Salinas v. Am. Family Ins. 13 Grp.*, 2015 WL 128040, at *2 (D. Or. Jan. 8, 2015) (applying Rule 62.1 to a motion for 14 reconsideration filed after a notice of appeal). Thus, the Court issues this as an indicative ruling. 15 As noted above, Plaintiff seeks reconsideration of the Court’s order imposing terminating 16 sanctions and dismissing the action with prejudice. (Docs. 96, 97.) The Court construes the 17 motions as filed under Rule 59(e) of the Federal Rules of Civil Procedure, which permits a party 18 to request the court alter or amend its judgment.¹ Fed. R. Civ. P. 59(e). 19 The Ninth Circuit explained relief may be granted under Rule 59(e) where a district court 20 “‘is presented with newly discovered evidence, committed clear error, or if there is an 21 intervening change in the controlling law.’” *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014) 22 (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) [emphasis in original]). 23 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of finality and 24 conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 25 (9th Cir. 2000). Ultimately, whether to grant or deny a motion for reconsideration is in the 26 1 The Court construes the motions as filed under Rule 59(e) because Plaintiff filed his motions within 28 days of the Court entering judgment. See Fed. R. Civ. P. 59(e); see also *Moore v. Mortg. Elec. Registration Sys., Inc.*, 650 F. 27 App’x 406, 407 n.1 (9th Cir. 2016) (citing *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001) (a motion for reconsideration is treated as a motion under Federal Rule of Civil Procedure 28 59(e) if it is filed timely under that rule, and as a motion under Federal Rule of Civil Procedure 60(b) otherwise)). 1 “sound discretion” of the district court. *Navajo Nation v. Norris*, 331 F.3d 1041, 1046 (9th Cir. 2 2003) (citing *Kona*, 229 F.3d at 883). A Rule 59(e) motion “may not be used to relitigate old 3 matters, or to raise arguments or present evidence that could have been raised prior to the entry of 4 judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008) (internal quotation marks 5 omitted). 6 Plaintiff’s motion does not provide any basis for overturning the Court’s judgment. In 7 support of his motion for reconsideration, Plaintiff states the ruling was “erroneous,” and that “the 8 district court is bound to follow the precedence (sic) of the memorandum of law.” (Doc. 96 at 1; 9 see also Doc. 97 at 1.) However, this assertion is simply an expression of his disagreement with 10 the order imposing terminating sanctions. *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 11 1131 (E.D. Cal. 2001). Plaintiff’s disagreement with the Court is insufficient to support his 12 requests for reconsideration. See *id.* (“[a] party seeking reconsideration must show more than a 13 disagreement with the Court’s decision”); *Pac. Stock, Inc. v. Pearson Educ.*, 927 F. Supp. 2d 991, 14 1005 (D. Haw. 2013) (“[m]ere disagreement with a previous order is an insufficient basis for 15 reconsideration”) (citation omitted). 16 Moreover, is undisputed that Plaintiff failed to participate in his noticed depositions, 17 which

prevented Defendants from adequately defending the claims against them. (See Docs. 77, 18 86.) The Court warned Plaintiff that his failure to participate or attend depositions could result in 19 terminating sanctions. (See Doc. 72 at 2, Doc. 81 at 10.) Despite these warnings, Plaintiff failed 20 to participate in his deposition as ordered. As the record reflects, the Court did not err in 21 imposing terminating sanctions.² Plaintiff does not identify new or different facts that he could 22 not have shown upon an earlier motion—or in his objections to the magistrate judge’s Findings 23 and Recommendations regarding terminating sanctions— or otherwise establish proper grounds 24 for reconsidering the Court’s final order. 25 Finally, a certificate of appealability is not required in this case. The certificate of 26 2 Towards this end, even if the Court construed Plaintiff’s motion as one brought under Rule 60(b) of the Federal Rules of Civil Procedure, the record does not support a conclusion that the Court made a “substantive error of law or 27 fact in its judgment or order,” as required to show a “mistake” that warrants relief under Rule 60(b). See Fed. R. Civ. P. 60(b)(1); see also *Bretana v. Int’l Collection Corp.*, 2010 WL 1221925, at *1 (N.D. Cal. 2010) (citing *Utah ex. 28 Rel. Div. of Forestry v. United States*, 528 F.3d 712, 722-23 (10th Cir. 2008)). 1 | appealability requirement applies to claims for habeas corpus relief, not a civil action. See Fed. 2 | R. App. P. 22(b); see also *Dalluge v. U.S. Dep’t of Justice*, 2011 WL 1675407, at *1 (W.D. 3 | Wash. May 4, 2011) (“As this case was brought pursuant to 42 U.S.C. § 1983, there is no 4 | requirement for a certificate of appealability”); *Jenkins v. Caplan*, 2010 WL 3057410, at *1 (N.D. 5 | Cal. Aug. 2, 2010) (“a Certificate of Appealability is inapplicable to a § 1983 action”). 6 For the reasons set forth above, the Court makes the following indicative ruling pursuant 7 | to Federal Rule of Civil Procedure 62.1. If the Court of Appeals remands this case for the Court 8 | to rule on the pending motions for reconsideration, the Court will order: 9 1. Plaintiff’s motions for reconsideration (Docs. 96 and 97) are DENIED; and 10 2. Plaintiffs application for a certificate of appealability (Doc. 98) is DENIED. 11 The Clerk of Court is directed to terminate the pending motions and send a copy of this 12 | order to the Ninth Circuit. 13 4 IT IS SO ORDERED. 5 Dated: _ May 22, 2025 Charis [Tourn
TED STATES DISTRICT JUDGE
16 17 18 19 20 21 22 23 24 25 26 27 28