

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Sankona Graham v. James Dzurenda, et al.

Graham · No. 2:25-cv-00270-GMN-BNW · Decided December 17, 2025

OPINION

1 UNITED STATES DISTRICT COURT 2 DISTRICT OF NEVADA 3 SANKONA GRAHAM,
Case No. 2:25-cv-00270-GMN-BNW 4 Plaintiff, ORDER DENYING MOTION TO v.
RECONSIDER CASE DISMISSAL 5 JAMES DZURENDA, et al., 6 Defendants. 7 8 On
December 9, 2025, the Court dismissed and closed this action because Nevada prisoner 9 Sankona
Graham failed to either pay the \$405 filing fee or apply to proceed in forma pauperis in 10
compliance with the Court’s February 21 and September 4, 2025, orders.

(ECF No. 8). The Clerk 11 of Court entered judgment accordingly. (ECF No. 9). Seven days later,
Graham filed a document 12 titled “Motion to Reconsider/Appeal Dismissal,” arguing this Court
was wrong when it stated that 13 Graham must address the matter of the filing fee before the
Court could screen his Complaint and 14 possibly refer this action to the Court’s Inmate Early
Mediation Program.

(ECF No. 10). Graham’s 15 filing was also docketed as a Notice of Appeal and transmitted to the
Ninth Circuit. (ECF No. 11). 16 The Ninth Circuit has not yet docketed the appeal. For the reasons
discussed below, the Court 17 denies Graham’s reconsideration motion. 18 I. DISCUSSION 19 A.
This Court has jurisdiction to deny Graham’s reconsideration motion. 20 “The filing of an
effective notice of appeal is a jurisdictional requirement [that] cannot be 21 waived.” *Miller v.*
Marriott Int’l, Inc., 300 F.3d 1061, 1063 (9th Cir.

2002). Rule 4(a)(4)(A) of 22 the Federal Rules of Appellate Procedure (“FRAP”) provides that the
timely filing of a motion 23 under Rules 50(b), 52(b), 54, 59, or 60 of the Federal Rules of Civil
Procedure (“FRCP”) tolls the 24 time to file an appeal for all parties until the district court enters
an order disposing of the last such 25 motion. Tolling applies regardless of whether a notice of
appeal is filed before or after the tolling 1 motion.

See *Tripati v. Henman*, 845 F.2d 205, 205–06 (9th Cir. 1988) (holding that a timely FRCP 2 59(e)
motion that was filed after a notice of appeal rendered the notice of appeal “not merely 3
defective; it was a nullity[,]” so the district court “erred in denying the motion solely on the
ground 4 that it lacked jurisdiction”).

The Ninth Circuit has explained that FRAP 4’s tolling mechanism 5 means that, “with respect to
[FRCP] 60(b) motions filed no later than [28] days after judgment 6 was entered,” “[t]he district

court retains jurisdiction to decide such motions.” Miller, 300 F.3d at 7 1065 (decided before the deadline to file a tolling FRCP 60 motion was extended to 28 days); see 8 Fed.

R. App. 4(a)(4)(A)(vi) advisory committee note to 2023 amendments. As FRAP (a)(4)(B)(i) 9 instructs, “[i]f a party files a notice of appeal after the court announces or enters a judgment—but 10 before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal 11 a judgment or order, in whole or in part, when the order disposing of the last such remaining motion 12 is entered.” Accordingly, Graham’s reconsideration motion is timely, and this Court retains 13 jurisdiction to deny it.¹⁴ B. Graham has not demonstrated that relief under FRCP 60(b)(1) is merited.

15 “Rule 60(b)(1) of Civil Procedure provides that a court may relieve a party or a party’s 16 legal representative from a final judgment on the basis of mistake, inadvertence, surprise, or 17 excusable neglect.” Bateman v. U.S. Postal Service, 231 F.3d 1220, 1223 (9th Cir. 2000).

The 18 Supreme Court has held that a judge’s legal errors qualify as “mistakes” under FRCP 60(b) (1). 19 Kemp v. United States, 596 U.S. 528, 533–34 (2022). 20 Graham moves to set aside the dismissal order and judgment, arguing that this Court 21 mistakenly determined that it would not send this action to its mediation program without first 22 requiring that Graham either pay the filing fee or apply for in forma pauperis status.

Graham did 23 24 1 FRCP 62.1 provides that “[i]f a timely motion is made for relief that the court lacks jurisdiction to grant because of an appeal that has been docketed and is pending, the court may: (1) defer 25 considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.” 1 not correct the defect that caused his case to be dismissed; he neither paid the filing fee nor applied 2 to proceed in forma pauperis.

Rather, attached to his motion are prison grievance documents and 3 the transcript of an educational video that the Court created in 2017 for inmates to better understand 4 its Inmate Early Mediation Program. (ECF No. 10 at 2–18). These documents do not undermine 5 the Court’s decision to dismiss this action based on Graham’s repeated refusal to address the matter 6 of the filing fee.

7 The grievance documents are not relevant to Graham’s instant motion. The video transcript 8 also is irrelevant because it does not supplant this Court’s orders that Graham must address the 9 matter of the filing fee to proceed with this action. But even if it did, Graham misreads the 10 transcript as supporting his position. Graham underlined and starred a sentence in the transcript’s 11 introduction stating, “Let’s begin with some basic information about how the inmates Section 1983 12 case proceeds once the complaint is sent to the court and then we will turn to the early mediation 13 process.” (Id. at 3).

Graham appears to contend this sentence means the mediation process may begin once an inmate sends his complaint to the Court. (See ECF No. 10 at 1 (arguing the transcript shows that courts “insist on Early Mediation program in an attempt to resolve issues prior to the court’s interference”)). But as former Judge Cooke explains later in the transcript—and as this Court has repeatedly explained to Graham—an inmate must either pay the filing fee or file an in forma pauperis application before screening and the Court, in its discretion, might order mediation.

(ECF No. 10 at 4 (explaining that “[m]ost inmates can’t afford to pay the filing fee required to begin a case in federal court[,] so they routinely file an IFP application” and “our court postpones consideration of the IFP application for 90 days to allow the inmates case to go to mediation”)). Graham’s case law fares no better than his exhibits.

He cites *Ross v. Blake*, 578 U.S. 632 (2016), and *Nunez v. Duncan*, 591 F.3d 1217 (9th Cir. 2010), as supporting his argument that the Court mistakenly dismissed this action rather than sending it to mediation as Graham asked. But neither case concerns mediation, inmate in forma pauperis proceedings, filing fees for civil actions, or the intersection of any of these issues.

See *Ross*, 578 U.S. at 648 (holding that “courts may not engraft an unwritten ‘special circumstances’ exception onto the PLRA’s exhaustion requirement” (citation modified)); see also *Nunez*, 591 F.3d at 1228-29 (holding inmate’s failure to exhaust Fourth Amendment claim was excused, but claim failed on the merits, and affirming summary judgment against inmate on his First Amendment claim on exhaustion grounds).

7 || ID. CONCLUSION 8 IT IS HEREBY ORDERED that Graham’s motion to reconsider the dismissal order and 9 || judgment (ECF No. 10) is DENIED. 10 DATED this 17 day of December 17, 2025. Gloria M. Ne arro, District Judge United States District Court 13 14 15 16 17 18 19 20 21 22 23 24 25