

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
TENNESSEE, WESTERN DIVISION

Mid-America Apartment Communities, Inc. v. Dennis Michael
Philipson

Mid-America Apartment Communities, Inc. v. Philipson, No. 2:23-cv-2186-SHL-cgc (W.D. Tenn. May 26,
2026) · No. 2:23-cv-2186-SHL-cgc · Decided May 26, 2026

SUMMARY

The United States District Court for the Western District of Tennessee denies without prejudice Defendant Dennis Michael Philipson’s motion to reconsider an order concerning correction and settlement of the appellate record under Federal Rule of Appellate Procedure 10(e). The court concludes that Philipson’s pending appeal divested the district court of authority to reconsider the appealed order, while permitting him to refile if the Sixth Circuit determines that the order is not appealable.

CASE DETAILS

COURT	United States District Court for the Western District of Tennessee, Western Division
WRITING FOR THE COURT	Sheryl H. Lipman
JURISDICTION	United States District Court for the Western District of Tennessee, Western Division
DECIDED	May 26, 2026
DOCKET	2:23-cv-2186-SHL-cgc
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved for reconsideration of an order denying his request to correct and settle the appellate record under Federal Rule of Appellate Procedure 10(e). Because Defendant had filed a notice of appeal from that order, the district court declined to substantively reconsider it and denied the motion without prejudice.
STANDARD OF REVIEW	The court did not reach the substantive merits of reconsideration because the pending appeal deprived the district court of authority to alter the order on appeal.
PRECEDENTIAL VALUE	unpublished district court order

PARTIES

Dennis Michael Philipson v. Mid-America Apartment Communities, Inc.

TOPICS

motion for reconsideration

appellate jurisdiction

appellate procedure

civil procedure

PRACTICE AREAS

civil procedure

appellate procedure

commercial litigation

trademark

QUESTIONS PRESENTED

1. Whether the district court had authority to reconsider an order that was the subject of a pending appeal.
2. Whether an exception permitting district-court actions in aid of an appeal or involving a clearly nonappealable order authorized the court to alter the record on appeal.
3. Whether the motion for reconsideration should be denied without prejudice pending the Sixth Circuit's determination of appealability.

HOLDINGS

1. The filing of a notice of appeal divested the district court of control over the aspects of the case involved in the appeal, so the district court lacked authority to substantively reconsider the order being appealed.
2. The exception allowing a district court to take actions in aid of the appellate process did not authorize reconsideration because the requested action would alter the case and the record on appeal.
3. The court declined to apply the clearly nonappealable-order exception because, although it had serious doubts about appealability, there was not sufficient certainty to justify substantively ruling on reconsideration while the appeal was pending.

KEY QUOTATIONS

“The Court does not have the authority to reconsider an order when the very order is being appealed.”

“Mr. Philipson’s motion to reconsider seeks to do precisely that by altering the record before the Sixth Circuit, however, making that exception inapplicable.”

“Accordingly, Mr. Philipson’s Motion is DENIED WITHOUT PREJUDICE.”

FACTUAL BACKGROUND

Defendant Dennis Michael Philipson sought to have Plaintiff file or lodge materials allegedly used in the district court or certify that disputed materials had not been before or relied upon by the court. The district court had denied that request in a prior order, and Philipson filed a notice of appeal from that order before seeking reconsideration.

PROCEDURAL HISTORY

The district court previously denied Defendant's request to correct and settle the record. Defendant then filed a motion characterized alternatively as an objection, rebuttal, motion for reconsideration, record-settlement request, and request for an indicative ruling under Federal Rule of Civil Procedure 62.1. Defendant had also filed a notice of appeal from the prior order. The district court concluded that reconsideration would alter an order involved in the pending appeal and denied the motion without prejudice, permitting refiling if the Sixth Circuit determines that the prior order is not appealable.

DISPOSITION

other

CASES CITED

- GenCorp, Inc. v. American International Underwriters, 178 F.3d 804, 834 (6th Cir. 1999)
- Greer v. Strange Honey Farm, LLC, 114 F.4th 605, 612-13 (6th Cir. 2024)
- Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (per curiam)
- United States v. Carman, 933 F.3d 614, 617 (6th Cir. 2019)

OPINION

DOE-1
PER CURIAM.
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION
MID-AMERICA APARTMENT)
COMMUNITIES, INC.,)
) Plaintiff,) v.) No. 2:23-cv-2186-SHL-cgc)
DENNIS MICHAEL PHILIPSON,
) Defendant.)

ORDER DENYING WITHOUT PREJUDICE MOTION TO RECONSIDER

Before the Court is Defendant Dennis Michael Philipson’s Objection and Rebuttal to ECF No. 407, Motion for Reconsideration and Record Settlement Under Fed. R. App. P. 10(e), and Request for Indicative Ruling Under Fed. R. Civ. P. 62.1, filed May 13, 2026. (ECF No. 409.) Mr. Philipson characterizes the motion as “asking this Court to correct clear legal error, settle the Rule 10(e) dispute it was required to settle, and preserve a clean record for appellate review.” (Id. at PageID 9480.) Mr. Philipson asserts that Plaintiff Mid-America Apartment Communities, Inc., “should be ordered to file or lodge the materials it actually used in this Court, or certify under 28 U.S.C. § 1746 that the disputed categories were not before the Court and were not relied upon by the Court.” (Id.) Mr. Philipson is not entirely clear what he intends his filing to be treated as. At certain points, he characterizes his filing as an objection and a rebuttal to ECF No. 407. But he

also separately explains that, “[t]o the extent this filing is treated as a motion for reconsideration, reconsideration is warranted to correct clear legal error and prevent manifest injustice.” (Id. at PageID 9487 (citing *GenCorp, Inc. v. Am. Int’l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999)).) Mr. Philipson further explains that, “[t]o the extent Local Rule 7.3 informs the analysis, ECF No. 407 reflects a manifest failure to consider material facts and dispositive legal arguments presented before the order: the request was for record settlement and certification of use/non-use, not merits supplementation.” (Id.) As Mr. Philipson notes in his filing, he “has filed a notice of appeal from ECF No. 407” with the Sixth Circuit Court of Appeals. (Id. at PageID 9485 (citing ECF No. 408).) The Court has previously issued orders in this case while Mr. Philipson has had appeals pending before the Sixth Circuit. (See, e.g., ECF Nos. 310, 379, 410.) But those orders, as the Court has explained, have dealt with the enforcement of the Court’s judgment and permanent injunction. Even when a party has a live appeal, the trial court retains jurisdiction to enforce its judgment. (See ECF No. 310 at PageID 6898 (citing cases for the proposition that “[t]he Court retains jurisdiction to enforce its judgment in this case,” and that, “[w]hile a district court’s jurisdiction typically ends when a case is closed and judgment entered, a district court retains ancillary jurisdiction to manage its proceedings, vindicate its authority, and effectuate its decrees”) (citations and quotations omitted).) Although the Court has previously noted that Federal Rule of Appellate Procedure 10(e) allows for record corrections before or after the record has been filed (ECF No. 407 at PageID 9467), the Court does not have the authority to reconsider an order when the very order is being appealed. See *Greer v. Strange Honey Farm, LLC*, 114 F.4th 605, 612 (6th Cir. 2024) (“[T]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam)). Nevertheless, there are multiple exceptions to Griggs’s jurisdiction-divestiture rule, including that the court can take actions that will aid in the appellate process, as well as the so-called “clearly nonappealable order” exception that allows a district court to retain jurisdiction if a notice of appeal is filed from an order for which “there is no serious dispute” as to its interlocutory nature. Id. at 612–13. The categories of actions a district court can take in aid of the appellate process is narrowly defined and does not include “actions that alter the case on appeal.” Id. at 613 (quoting *United States v. Carman*, 933 F.3d 614, 617 (6th Cir. 2019)). Mr. Philipson’s motion to reconsider seeks to do precisely that by altering the record before the Sixth Circuit, however, making that exception inapplicable. Moreover, although the Court has serious doubts that ECF No. 407, which denied Mr. Philipson’s request to correct and settle the record, is an appealable order, out of an abundance of caution, the Court will nevertheless refrain from substantively ruling on the motion to reconsider based on the pending appeal. Accordingly, Mr. Philipson’s Motion is DENIED WITHOUT PREJUDICE. If the Sixth Circuit determines that ECF No. 407 is not an appealable order, Mr. Philipson may re-file his motion to reconsider. IT IS SO ORDERED, this 26th day of May, 2026. s/ Sheryl H. Lipman

SHERYL H. LIPMAN
CHIEF UNITED STATES DISTRICT JUDGE

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-western-district-of-ten/2026/mid-america-apartment-communities-inc-v-dennis-michael-rmvvg4ao>