

860 F.2d 1081

Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)
United States Court of Appeals, Sixth Circuit.

Pearly L. WILSON, Plaintiff-Appellant,

v.

George F. DENTON, Director; Neil Kette, Supt., Defendants-Appellees.

No. 88-3306. | Oct. 19, 1988.

S.D. Ohio

AFFIRMED.

Before MERRITT and RYAN, Circuit Judges, and NICHOLAS J. WALINSKI, Senior District Judge.*

Opinion

ORDER

*1 This pro se plaintiff appeals an order of the district court which denied his motion for relief from judgment filed pursuant to Fed.R.Civ.P. 60(b). Defendants now move to either dismiss the appeal or affirm the district court's final order. Upon examination of the record and the brief submitted by plaintiff, this panel unanimously agrees that oral argument is not needed. Fed.R.App.P. 34(a).

Pearly Wilson filed a motion for relief from judgment pursuant to Fed.R.Civ.P. 60(b) in the district court for the Southern District of Ohio. As the basis of his request for that relief, he related that he had previously maintained a cause of action under 42 U.S.C. § 1983 against defendants for violation of his eighth amendment right to necessary medical care. Even though the district court had dismissed that action and that result had subsequently been affirmed on appeal, plaintiff maintained that he was entitled to an award of damages as his claim had once been associated with a class action which had terminated in the entry of a consent decree. The district court determined, however, that the resolution of the class action bore no relation to plaintiff's individual eighth amendment claim and therefore denied the motion for relief from judgment. This appeal ensued.

An appellate court may disturb the denial of a request for relief from judgment under Fed.R.Civ.P. 60(b) only if it can determine that the district court's decision constitutes an abuse of discretion. *Peake v. First Nat'l Bank & Trust Co.*, 717 F.2d 1016, 1020 (6th Cir.1983). Based upon a careful examination of the record, this court concludes that the district court did not violate that standard in this case.

Accordingly, defendants' motion to dismiss the appeal or affirm the order of the district court is hereby denied as unauthorized by the rules of this court. Rule 8(a)(3), Rules of the Sixth Circuit. Moreover, the district court's final order entered March 31, 1988, is hereby affirmed. Rule 9(b)(5), Rules of the Sixth Circuit.

Parallel Citations

1988 WL 109861 (C.A.6 (Ohio))

Footnotes

Wilson v. Denton, 860 F.2d 1081 (1988)

* The Honorable Nicholas J. Walinski, Senior U.S. District Judge for the Northern District of Ohio, sitting by designation.