

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THOMAS STEPHENSON,	:		
	:		
Plaintiff,	:	Civil Action No.:	00-1921 (RMU)
	:		
v.	:		
	:	Document No.:	36
OFFICER JOHN COX and	:		
OFFICER WILLIAM MOSSBURG,	:		
	:		
Defendants.	:		

MEMORANDUM ORDER

DENYING THE PLAINTIFF’S MOTION FOR RELIEF FROM JUDGMENT

Plaintiff Thomas Stephenson filed a complaint against United States Park Police Officers John Cox and William Mossburg (collectively “the defendants”) for damages caused by their allegedly unlawful arrest and detention of him. Although the defendants filed a motion to dismiss on December 4, 2001, the plaintiff, represented by counsel, failed to respond to that motion until May 15, 2002. On September 23, 2002, the court granted as conceded the defendant’s motion because the plaintiff had failed to both timely respond to the motion and demonstrate excusable neglect in support of his request that the court consider his five-month-late response. This matter is now before the court on the plaintiff’s October 10, 2002 motion for relief from the court’s judgment.

Because the plaintiff filed his motion more than 10 days after the entry of the judgment at issue, the court treats the motion as a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b), rather than the less burdensome motion for relief pursuant to Rule 59(e). *Computer Prof’ls for Soc. Responsibility v. U.S. Secret Serv.*, 72 F.3d 897, 903 (D.C. Cir. 1996) (stating that an untimely motion under Rule 59(e) may be

considered as a motion under Rule 60(b)). Rule 60(b) gives a court discretion to relieve a party from an otherwise final judgment when that party demonstrates mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or fraud. FED. R. CIV. P. 60(b); *Lepkowski v. Dep't of Treasury*, 804 F.2d 1310, 1311-12 (D.C. Cir. 1986); *Muwekma Tribe v. Norton*, 206 F. Supp. 2d 1, 3 (D.D.C. 2002). For motions filed one year or more after the judgment, Rule 60(b) permits relief if the judgment is void or otherwise satisfied or for “any other reason justifying relief from the operation of the judgment” if the “party is faultless in the delay.” *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 393 (1993) (stressing that courts should apply the “any other reason” prong sparingly).

Interestingly, the plaintiff repeatedly blames his failure to timely and adequately respond to the defendants' motion to dismiss on the fact that the court waited nine months to rule on the defendant's motion to dismiss. Pl.'s Mot. ¶¶ 6, 7, 11, 13. The plaintiff bases his motion on the court's delay despite the fact that the plaintiff filed his opposition five months late and only after the court issued an order to show cause why the court should not treat the motion to dismiss as conceded. *Id.* The court's delay fails to justify relief from judgment, however, because a court's delay in ruling on a motion to dismiss is not a ground for relief pursuant to Rule 60(b). FED. R. CIV. P. 60(b); *Lepkowski*, 804 F.2d at 1311-12; *Muwekma Tribe*, 206 F. Supp. 2d at 3. Because the plaintiff has failed to demonstrate the existence of a mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, or any other reason that could justify relief from the court's September 23, 2002 judgment, the court denies the plaintiff's motion for relief from judgment. *Id.*

Accordingly, it is this _____ day of August, 2003,

ORDERED that the plaintiff's motion for relief from judgment is **DENIED**.

SO ORDERED.

Ricardo M. Urbina
United States District Judge

**Service List in *Stephenson v. Cox and Mossburg*
Civil Action No. 00-1921 (RMU)**

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