

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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PETER B.,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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Civil Action No. 05-2189 (RWR)

MEMORANDUM OPINION AND ORDER

Plaintiff moves to reconsider the order granting defendant's motion to dismiss as conceded and dismissing this case.

Defendant opposes the motion. Because plaintiff has stated a sufficient reason to justify relief from judgment, plaintiff's motion will be granted.

BACKGROUND

On November 1, 2005, plaintiff delivered to the Clerk's Office a complaint against the United States alleging various acts of tortious conduct by the Central Intelligence Agency ("CIA") that caused plaintiff severe emotional distress.<sup>1</sup> The complaint was docketed as having been filed on November 7, 2005. Plaintiff had filed his administrative claim under the Federal Tort Claims Act, 28 U.S.C. § 2675, in November 2004, and the CIA mailed its denial of the claim on May 2, 2005. The defendant

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<sup>1</sup> The court's copy of the complaint reflects receipt by the Clerk's Office on November 1, 2005 at 9:16 p.m.

moved to dismiss this case for want of subject matter jurisdiction, arguing that plaintiff failed to bring this claim by November 1, 2005 -- within six months of the CIA mailing notice of the claim's denial to plaintiff -- as required by 28 U.S.C. § 2401(b). Plaintiff did not oppose defendant's motion within the time prescribed by the local rules and was ordered to show cause in writing why the motion to dismiss should not be deemed conceded. Plaintiff, through his attorney, responded to the show cause order by filing a motion for extension of time to amend the complaint, citing the personal circumstances of plaintiff's attorney -- namely, the illness of the attorney and the serious illness of the attorney's wife -- for causing the delay. However, the response failed to state a reason why the motion to dismiss should not be granted and failed to explain how the amended complaint would cure any defect in the original complaint. An order issued on June 13, 2006 granted as conceded defendant's motion to dismiss, merely noting that defendant's motion appeared to have merit, and dismissed the case.

Plaintiff now has obtained a new attorney and moves for reconsideration of the dismissal, arguing that the plaintiff himself was unaware of his original attorney's circumstances and should not be punished for that attorney's shortcomings, and that

defendant's motion to dismiss lacked merit.<sup>2</sup> Defendant opposes the motion arguing that the reasons proffered by plaintiff are insufficient to warrant reconsideration.

#### DISCUSSION

On the motion of a party and "upon such terms as are just," a district court may relieve a litigant from a final judgment. Fed. R. Civ. P. 60(b). In exercising this discretion, a district court "must balance the interest in justice with the interest in protecting the finality of judgments." Summers v. Howard Univ., 374 F.3d 1188, 1193 (D.C. Cir. 2004). However, it is "contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of . . . mere technicalities." English-Speaking Union v. Johnson, 353 F.3d 1013, 1021 (D.C. Cir. 2004) (quoting Foman v. Davis, 371 U.S. 178, 181 (1962)); Spann v. Comm'rs of D.C., 443 F.2d 715, 716 n.1 (D.C. Cir. 1970) (noting the "liberal spirit" of rule 60(b) and "the basic policy favoring resolution of litigation on the merits"). An unwitting plaintiff need not be thrown out of court

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<sup>2</sup> The defendant's motion to dismiss argued that this case should be dismissed because plaintiff's complaint was untimely filed and that since plaintiff was an employee of the Central Intelligence Agency, the Civil Service Reform Act ("CSRA") barred plaintiff's claims. (See Def.'s Mot. to Dismiss at 3-8.) The plaintiff contends in his motion for reconsideration that the complaint was not untimely filed because it was received timely by the Clerk's Office on November 1, 2005 and that the CSRA does not bar the plaintiff's claims because plaintiff was not an employee of the CIA within the meaning of the CSRA. (See Pl.'s Mot. to Reconsider at 2-4.)

when "personal problems of counsel cause him grossly to neglect a diligent client's case." L.P. Steuart, Inc. v. Matthews, 329 F.2d 234, 235-36 (D.C. Cir. 1964) (holding that Rule 60(b)(6) "'vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'" (quoting Klapprott v. United States, 335 U.S. 601, 614-15 (1949))).

Here, defendant's motion to dismiss was granted as conceded rather than on the merits following full briefing. Plaintiff now has new counsel and disputes the merits of defendant's motion to dismiss. Nothing indicates that the plaintiff himself was less than diligent in pursuing his claim, and the unfortunate circumstances that befell his original lawyer should not prevent plaintiff from having his day in court. Importantly, defendant alleges no prejudice if plaintiff's motion is granted. Under these circumstances, it is appropriate to vacate the previous judgment of dismissal and allow plaintiff to oppose defendant's motion to dismiss on the merits in order to accomplish justice in this case.

#### CONCLUSION AND ORDER

Because plaintiff has stated a sufficient reason to justify relief from judgment, plaintiff's motion for reconsideration will be granted. Accordingly, it is hereby

ORDERED that plaintiff's motion [16] for reconsideration be, and hereby is, GRANTED. The Order of June 13, 2006 dismissing this case is VACATED. Plaintiff shall file an opposition to defendant's motion to dismiss on or before August 1, 2006. It is further

ORDERED that plaintiff's motion [19] for an extension of time to file a reply be, and hereby is, GRANTED *nunc pro tunc*.

SIGNED this 19th day of July, 2006.

/s/  
RICHARD W. ROBERTS  
United States District Judge