

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-10698
Conference Calendar

JAMES D. BOSWELL,

Plaintiff-Appellant,

versus

DONALD RUMSFELD, The Secretary of
Defense, ET AL.,

Defendants,

TEXAS CHRISTIAN UNIVERSITY; WILLIAM
E. TUCKER, Dr., Chancellor; MICHAEL D.
MCCRACKEN, Dean,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:98-CV-168-Y

June 14, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

James D. Boswell, pro se, appeals the district court's denial of his motion for relief from judgment filed pursuant to Fed. R. Civ. P. 59(e) and 60(b). Boswell also moves for leave to file an out-of-time reply brief; that motion is GRANTED.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Boswell's motion for relief from the judgment sought other relief, but he has not argued the other bases for the motion; accordingly, he has abandoned them. Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993). Boswell contends that he is entitled to relief from the judgment on the ground of newly discovered evidence.

Because Boswell's motion was not filed within ten days of the judgment it cannot be considered a timely motion to alter or amend the judgment pursuant to Rule 59(e). See Fed. R. Civ. P. 59(e). Further, a Rule 60(b) motion for relief from judgment on the ground of newly discovered evidence must be filed not more than one year after the judgment. See Fed. R. Civ. P. 60(b). Boswell's motion was filed more than 14 months after the judgment. Under these circumstances, the district court did not abuse its discretion in denying the motion. See Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981).

This appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is DISMISSED. 5th Cir. R. 42.2.