

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-11142
Summary Calendar

JOSEPH A. HALEY,

Plaintiff-Appellant,

versus

B. MUERER, PHSA; DICK CASON, R. Ph.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:96-CV-34-C
- - - - -

July 28, 1998

Before KING, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Joseph A. Haley, Texas prisoner # 688340, appeals the magistrate judge's October 2, 1997, denial of his "Objection to the Magistrate Judge's Order and Judgment Granting Defendants' Motion for Summary Judgment with Affidavit in Support." Because Haley's objections were not filed within ten days of the entry of the magistrate judge's judgment, the objections are construed as a Rule 60(b) motion. See Harcon Barge Co. v. D & G Boat Rentals, 784 F.2d 665, 667-69 (5th Cir. 1986)(en banc). Haley argues that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the district court erred in granting the motion for summary judgment filed by Brenda Muerer and Dick Cason. Haley has not shown that any of the grounds enumerated in Rule 60(b)(1) to (5) are present and has not shown that extraordinary circumstances exist which would warrant relief under Rule 60(b)(6). See Government Fin. Servs. One Ltd. Partnership v. Peyton Place, Inc., 62 F.3d 767, 773-74 (5th Cir. 1995). Haley has shown that the magistrate judge abused his discretion in denying his Rule 60(b) motion. See Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981)(en banc).

AFFIRMED.