

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES GEORGE DOURIS	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 03-CV-5661
	:	
BUCKS COUNTY OFFICE OF	:	
THE DISTRICT ATTORNEY, and	:	
DIANE E. GIBBONS, IN HER	:	
OFFICIAL CAPACITY.	:	

**MEMORANDUM ORDER**

AND NOW, this 28<sup>th</sup> day of January, 2005, upon consideration of “Plaintiff Douris’ Rule 60(b)(2) Motion” (Doc. No. 48, No. 03-CV-5661), it is ORDERED as follows:

1. Pro se Plaintiff James George Douris filed suit against the Bucks County District Attorney’s Office and Diane E. Gibbons, in her official capacity, for violations of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 951. Plaintiff alleged that proper accommodation was not made for him at an auction of confiscated property in Bucks County. We granted the motion for summary judgment filed by the Defendants and dismissed Plaintiff’s claims. *Douris v. Bucks County Office of the District Attorney*, Civ. A. No. 03-CV-5661, 2004 U.S. Dist. LEXIS 12769, at \*2 (E.D. Pa. July 6, 2004).

2. Plaintiff is proceeding pro se in this case. Allegations by pro se petitioners, “‘however inartfully pleaded,’ are held ‘to less stringent standards than formal pleadings drafted by lawyers . . . .’” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). In liberally construing a pro se plaintiff’s pleadings, we will “‘apply the applicable law,

irrespective of whether a pro se litigant has mentioned it by name.” *Higgins v. Beyer*, 293 F.3d 683, 687 (3d Cir. 2002) (citing *Holley v. Dep’t of Veteran Affairs*, 165 F.3d 244, 247-48 (3d Cir. 1999)).

3. Plaintiff files the instant Motion pursuant to Federal Rule of Civil Procedure 60(b)(2) and asks this Court to set aside its July 6, 2004, Order dismissing his claims against the Defendants. Under Rule 60(b)(2), a party may ask the court to relieve him from a final judgment, order, or proceeding if he can point to “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” Fed. R. Civ. P. 60(b)(2). A court should only grant relief if the asserted newly discovered evidence: (1) is material and not merely cumulative; (2) could not have been discovered before the grant of summary judgment through the exercise of reasonable diligence; and (3) would have changed the outcome of the litigation. *See Compass Tech., Inc. v. Tseng Labs., Inc.*, 71 F.3d 1125, 1130 (3d Cir. 1995) (citing *Bohus v. Beloff*, 950 F.2d 919, 930 (3d Cir. 1991)); *Macario v. Pratt & Whitney Canada, Inc.*, Civ. A. No. 90-3906, 1994 U.S. Dist. LEXIS 5272, at \*6-7 (E.D. Pa. Apr. 25, 1994). The moving party “bears a heavy burden which requires more than a showing of the potential significance of the new evidence.” *Yelverton v. Lehman*, Civ. A. No. 96-6114, 1998 U.S. Dist. LEXIS 13794, at \*5-6 (E.D. Pa. Sept. 4, 1998) (denying pro se plaintiff’s Rule 60(b)(2) motion); *see also Bohus*, 950 F.2d at 930 (“We view Rule 60(b) motions as ‘extraordinary relief which should be granted only where extraordinary justifying circumstances are present.’”) (quoting *Plisco v. Union R.R. Co.*, 379 F.2d 15, 17 (3d Cir. 1967)).

4. Plaintiff does not point to any newly discovered material evidence which would have changed the outcome of the litigation. He relies on three pieces of “newly discovered evidence,”

none of which provides a basis for granting his Motion. Douris avers that Defendants filed three pleadings that contained text which was too small for him to read. (Doc. No. 48 ¶¶ 7-9.) Two of the pleadings were filed in another lawsuit and have nothing to do with this action. (*Id.* ¶¶ 8-9.) The third pleading was filed before we dismissed Plaintiff's claims, and so cannot constitute newly discovered evidence. (*Id.* ¶ 7.) In any event, none of these allegations would have impacted the Court's decision to grant summary judgment to Defendants and to dismiss Plaintiff's Complaint. Accordingly, the Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge