

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

GABRIELLA C. SCOTT : CIVIL ACTION
: :
vs. : :
: :
UNITED STATES ENVIRONMENTAL : :
PROTECTION AGENCY; and : :
THOMAS CURRAN BROWN : NO. 97-6529

ORDER AND MEMORANDUM

ORDER

AND NOW, to wit, this 2nd day of June, 1999, upon consideration of Federal Defendants' Motion for Reconsideration (Document No. 21, filed March 16, 1999), and plaintiff's Memorandum of Law in Opposition to Defendants' Motion for Reconsideration of the Court's Order (Document No. 23, filed April 15, 1999), **IT IS ORDERED**, for the reasons set forth in the following Memorandum, and this Court's Order and Memorandum dated March 16, 1999, that Federal Defendants' Motion for Reconsideration is **DENIED**.

IT IS FURTHER ORDERED that a Preliminary Pretrial Conference will be scheduled in due course.

MEMORANDUM

The standards for granting a Motion for Reconsideration under Federal Rule of Civil Procedure 59(e) are quite high. "A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of" or as an attempt to relitigate "a point of disagreement between the Court and the litigant." Waye v. First Citizen's Nat'l Bank, 846 F.Supp. 310,

314 n. 3 (M.D.Pa.), aff'd. 31 F.3d 1175 (3d Cir. 1994). The motion may only be granted if "(1) there has been an intervening change in controlling law; (2) new evidence, which was not available, has become available, or (3) it is necessary to correct a clear error of law or prevent a manifest injustice." Burger v. Mays, No. CIV.A. 96-4365, 1997 WL 611582, *2 (E.D.Pa. Sept.23, 1997). See also Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985)(discussing appropriateness of granting motion under Rule 59 where court committed "manifest errors of law").

Federal defendants ask the Court to reconsider it's Order of March 16, 1999 granting plaintiff's Motion for Relief under Federal Rule of Civil Procedure 60(b).¹ In that order and the accompanying memorandum, the Court concluded that plaintiff, who had voluntarily dismissed her complaint under Federal Rule of Civil Procedure 41, was entitled to relief from that voluntary dismissal under Rule 60(b). The Court reasoned that because the Federal Tort Claims Act ("FTCA") expressly makes the Federal Rules of Civil Procedure applicable, the Court retained jurisdiction over plaintiff's FTCA claim to the extent that Rule 60, which is appropriate for a number of reasons where there is a "final judgment, order, or proceeding", is applicable to a voluntarily dismissed complaint. The Court then ruled that Rule 60(b) was

¹ See Scott v. United States Environmental Protection Agency, --- F.R.D. ---, No. 97-6529, 1999 WL 150492 (E.D.Pa. March 16, 1999).

applicable because a voluntary dismissal is a final judgment, and thus within the scope of the rule. Having determined that Rule 60(b) could be applied to the voluntary dismissal, the Court held that relief was appropriate due to an excusable mistake by plaintiff's counsel, and ordered the complaint reinstated.

Citing much of the same authority as in their previous submissions to the Court, federal defendants continue to argue that the Court committed an error of law and impermissibly extended its subject matter jurisdiction. Specifically, in the Motion for Reconsideration, federal defendants submit the following: (1) plaintiff's voluntarily dismissal is not a final judgment as required by Rule 60; and (2) even if Rule 60 applies in this situation, granting the requested relief is not within the subject matter jurisdiction of the Court because (a) such relief would violate the sovereign immunity of the United States; (b) plaintiff's voluntarily dismissed complaint is a legal nullity; (c) the Federal Rules of Civil Procedure cannot create subject matter jurisdiction; and (d) neither the Court nor the parties can create subject matter jurisdiction.

The thrust of federal defendants' argument is that the Court does not have jurisdiction to grant plaintiff's motion because the case was voluntarily terminated on the record. The Court disagrees. The application of Federal Rule of Civil Procedure 60(b) to plaintiff's voluntarily dismissed complaint does not expand the Court's subject matter jurisdiction because (1) Rule

60 applies to final judgments, orders or proceedings, and (2) a voluntary dismissal constitutes a final judgment in that it ends the pending action. See Scott v. United States Environmental Protection Agency, --- F.R.D. ---, No. 97-6529, 1999 WL 150492 (E.D.Pa. March 16, 1999). See also Walker v. Dept. Of Veterans Affairs, No. 94 Civ. 5591, 1995 WL 625689 at *1 (S.D.N.Y. Oct. 25, 1995)(citing McGoff v. Rapone, 78 F.R.D. 8, 22 (E.D.Pa. 1978) for proposition that a voluntary dismissal may be addressed in a Rule 60(b) motion).

The Court also notes that federal courts have applied the Federal Rules of Civil Procedure in FTCA actions where otherwise the action would be barred by the statute of limitations. Under Federal Rule of Civil Procedure 15(c), an amended complaint may relate back to the date of filing the original complaint under certain circumstances. In application, the relation back rule has been utilized to avoid the bar of the statute of limitations in FTCA actions. See Allgeier v. United States, 909 F.2d 869, 873 (6th Cir. 1990)(concluding that in the appropriate circumstances Rule 15(c) could be applied to FTCA claim to avoid statute of limitations defense); Weisgal v. Smith, 774 F.2d 1277 (4th Cir. 1985)(assuming without discussing the question that a claim under the FTCA could relate back to the date filing of a Bivens action if the requirements of Rule 15(c) were met). The Court's Order of March 16, 1999 effectively accomplished the same end with a similar procedure: the proper application of the Federal Rules of Civil

Procedure to set aside a final judgment, a voluntary dismissal.
There was no manifest error of law.

For the foregoing reasons, the Court denies federal
defendants' Motion to Reconsider.

BY THE COURT:

JAN E. DUBOIS, J.