**NOT RECOMMENDED FOR PUBLICATION**

No. 23-1724

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT



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| LATAUSHA SIMMONS, | ) | |
| | ) | |
| Plaintiff-Plaintiff, | ) | |
| | ) | ON APPEAL FROM THE UNITED |
| v. | ) | STATES DISTRICT COURT FOR |
| | ) | THE EASTERN DISTRICT OF |
| CITY OF SOUTHFIELD, MI, et al., | ) | MICHIGAN |
| | ) | |
| Defendants-Appellees. | ) | |

O R D E R

Before: SILER, KETHLEDGE, and MURPHY, Circuit Judges.

LaTausha Simmons, proceeding pro se, appeals the district court's order denying her post-judgment motion to vacate or set aside the district court's order dismissing her complaint under Federal Rule of Civil Procedure 41(b) and to reinstate her case. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). Because Simmons has not shown that the district court abused its discretion in denying her post-judgment motion, we affirm.

Factual and Procedural Background

In 2019, Simmons sued the City of Southfield, its police department, and some of its police officers (the Southfield Defendants); the City of Detroit; the City of Detroit's police department (DPD) and its chief; some of the DPD's officers (the Individual DPD Defendants); and Ross Towing Company. On the whole, her complaint alleged that the defendants engaged in fraud and misconduct after she reported that her vehicle was stolen. Seeking monetary, injunctive, and declaratory relief, Simmons brought claims under federal law, state law, and the U.S. Constitution.

Simmons's involvement in this case largely began and ended with the filing of her complaint. Over the next two years, Simmons failed to respond to the Southfield Defendants' motion for judgment on the pleadings, despite several orders to do so; failed to properly serve the Individual DPD Defendants; failed to respond to the court's show-cause order regarding service; failed to respond to a motion to dismiss her claims against the Individual DPD Defendants for improper service; failed to respond to Ross Towing's motion to set aside an entry of default that the court had entered against it; filed an untimely motion to amend her complaint; and ignored the court's order directing her to file a reply brief in support of her motion to amend. In January 2022, the district court issued a show-cause order directing Simmons to address concerns related to her motion to amend, including her failure to file a reply brief as instructed.[1] Simmons did not respond to the show-cause order. The district court therefore dismissed the action under Rule 41(b), reasoning that each of the four factors that courts consider when determining whether to dismiss a plaintiff's complaint for failing to comply with a court order weighed in favor of dismissal. *See Rodriguez v. Hirshberg Acceptance Corp.*, 62 F.4th 270, 277 (6th Cir. 2023).

Exactly one year later, Simmons filed her post-judgment motion, citing Federal Rule of Civil Procedure 60(b)(1), (2), (3), and (6), among other rules. The district court denied the motion as meritless, reasoning that the dismissal of Simmons's complaint was due to her own failure to respond to its orders and was not attributable to any mistake or excusable neglect or any fraud, misrepresentations, or misconduct on the part of the defendants.

Scope and Standard of Review

We review the denial of a Rule 60(b) motion for an abuse of discretion. *Franklin v. Jenkins*, 839 F.3d 465, 472 (6th Cir. 2016). "We recognize an 'abuse of discretion' when our review leaves us with 'a definite and firm conviction that the trial court committed a clear error of judgment.'" *Id.* (quoting *Burrell v. Henderson*, 434 F.3d 826, 831 (6th Cir. 2006)). An appeal from an order denying a Rule 60(b) motion "does not bring up the underlying judgment for review." *Browder v. Dir., Dep't of Corr. of Ill.*, 434 U.S. 257, 263 n.7 (1978); *see Jinks v. AlliedSignal, Inc.*, 250 F.3d

[1] At this point, only the City of Detroit, its police chief, and Ross Towing remained as defendants.

381, 385 (6th Cir. 2001). Rather, our inquiry is limited to "whether one of the specified circumstances exists in which [the movant] is entitled to reopen the merits of h[er] underlying claims." *Yeschick v. Mineta*, 675 F.3d 622, 628 (6th Cir. 2012) (first alteration in original) (quoting *Cacevic v. City of Hazel Park*, 226 F.3d 483, 490 (6th Cir. 2000)).

Rule 60(b)(1)

A party may seek relief from a final judgment or order under Rule 60(b)(1) for "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). Rule 60(b)(1) "is intended to provide relief in only two situations: (1) when a party has made an excusable mistake or an attorney has acted without authority, or (2) when the judge has made a substantive mistake of law or fact in the final judgment or order." *United States v. Reyes*, 307 F.3d 451, 455 (6th Cir. 2002).

The district court did not abuse its discretion in determining that Simmons's failure to acknowledge that she repeatedly flouted court orders doomed her request for relief under Rule 60(b)(1). *See Yeschick*, 675 F.3d at 628-29. Simmons claimed that she "always acted in good faith with no ill intent or undue delay" and "remained compliant, at all times and good cause and 'excusable neglect' exist on [her] part for any missed deadline." But she provided no factual or evidentiary support for the argument. And the argument is defied by the record, which is summarized above and shows that Simmons repeatedly disregarded the district court's orders to participate in the case.

On appeal, Simmons argues that she could not file responses because she was "unconstitutional[ly] jail[ed]," had issues receiving mail in jail and at her home address, and suffered from medical issues. To the extent that these arguments were raised below and thus are properly before us, *cf. Ohio State Univ. v. Redbubble, Inc.*, 989 F.3d 435, 445 (6th Cir. 2021), they do not show excusable neglect for purposes of Rule 60(b)(1). First, although Simmons claims to have been in jail between August and October 2019 and again between December 2019 and January 2020, she was not admonished for failing to respond to any orders during those times. To the contrary, in November 2019, she moved for and was granted an extension of time to respond to the Southfield Defendants' motion for judgment on the pleadings; however, she never filed a

response within the timeframe provided by the district court, which extended beyond the date she was released from incarceration. And Simmons never claimed that she was incarcerated after January 30, 2020, a date that precedes most of the court orders and filings to which she failed to respond.

Second, Simmons's own conduct rebuts her argument that she "never received pleadings or other court documents[]" due to issues with the U.S. mail. The record shows that Simmons was aware of what was being filed in the district court, as she herself filed responsive documents. Take the following two examples: she moved for an extension of time to file a response to a dispositive motion, as just noted, and moved to set aside the district court's order that, among other things, dismissed her claims against the Southfield Defendants and the DPD. The record also shows that Simmons updated her address to a residential one in February 2020, and there is nothing to suggest that subsequent filings were not sent and received there. *See* Fed. R. Civ. P. 5(b)(2)(C) (providing that "service is complete" upon mailing a filing to the recipient's "last known address"). That Simmons purportedly "did not have access to any of her U.S. mail received at her home address" when she was released from jail in January 2020 does not demonstrate excusable neglect. She could have, among other things, updated her address again to have case filings sent to an address at which she could access them. And finally, Simmons does not elaborate on how her alleged medical issues interfered with her ability to participate in the case and respond to the district court's orders. Simply put, Simmons's conduct demonstrates "a reckless disregard for the effect of [her] conduct on th[e] proceedings," *Williams v. Meyer*, 346 F.3d 607, 613 (6th Cir. 2003) (quoting *Amernational Indus. v. Action-Tungsram, Inc.*, 925 F.2d 970, 978 (6th Cir. 1991)), rather than any kind of excusable mistake.

In addition, Simmons did not identify any substantive mistakes of law or fact on the part of the district court that would warrant Rule 60(b)(1). *See Reyes*, 307 F.3d at 455. Indeed, *she* is the one who has made a mistake of fact by claiming that she "never failed to comply with [the] Court's Orders regarding responding to any of Defendants' pleadings." As set forth above, the record shows that Simmons repeatedly ignored court orders, including those directing her to file

responses to and replies in support of motions. The district court therefore did not abuse its discretion in concluding that Simmons identified no mistake that might justify relief from the dismissal of her complaint under Rule 41(b).

In short, because Simmons did not demonstrate a lack of culpability and did not identify a substantive mistake of fact, the district court's denial of relief under Rule 60(b)(1) was not an abuse of discretion.

Rule 60(b)(2)

A party is entitled to relief from the judgment under Rule 60(b)(2) if she has "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under [Federal Rule of Civil Procedure 59(b)]." Fed. R. Civ. P. 60(b)(2). A party moving for relief under Rule 60(b)(2) must "show by clear and convincing evidence (1) that [she] exercised due diligence to obtain the evidence and (2) that the evidence is material, *i.e.*, would have clearly resulted in a different outcome." *Luna v. Bell*, 887 F.3d 290, 294 (6th Cir. 2018).

Here, the allegedly "newly discovered evidence" is a "release slip" and a report from the Southfield Police Department, an invoice from Ross Towing, and what appears to be the cover page to a report from the DPD. According to Simmons, this evidence shows that the defendants' "fraudulent towing scheme" continued after she filed her complaint and is ongoing. Yet these documents are not "newly discovered" for Rule 60(b)(2) purposes because Simmons could have previously obtained them, such as through a simple request to the issuing entity or through a Freedom of Information Act request. *See Leisure Caviar, LLC v. U.S. Fish & Wildlife Serv.*, 616 F.3d 612, 617 (6th Cir. 2010) ("To constitute 'newly discovered evidence,' the evidence must have been previously unavailable." (quoting *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999))). Her argument that these avenues to obtain the documents were unavailable "due to COVID" is factually unsupported. Denial of relief under Rule 60(b)(2) therefore was not an abuse of discretion.

Rule 60(b)(3)

Rule 60(b)(3) requires a movant to show by "clear and convincing evidence" that defendants deliberately engaged in some act of fraud, misrepresentation, or other misconduct. *Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 455 (6th Cir. 2008).

Here, although Simmons claims that the defendants acted fraudulently and engaged in misconduct, those claims relate to the defendants' alleged acts that form the basis of her complaint (namely, allegations that the defendants engaged in a "fraudulent towing scheme"). Simmons did not point to any evidence—let alone clear and convincing evidence—that the defendants engaged in any fraud or other misconduct during the proceedings that adversely affected the fairness of her case. The district court therefore did not abuse its discretion in denying Simmons relief under Rule 60(b)(3).

Rule 60(b)(6)

"Relief pursuant to Rule 60(b)(6) is available 'only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of the Rule' and 'only as a means to achieve substantial justice.'" *Tanner v. Yukins*, 776 F.3d 434, 443 (6th Cir. 2015) (quoting *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990)). Although Simmons cited Rule 60(b)(6) in passing, she failed to identify any exceptional or extraordinary circumstance warranting relief under this subsection. Her broad argument that the district court improperly dismissed her case under Rule 41(b) without reaching the merits of her claims is insufficient. *See id.*

For the foregoing reasons, we find that the district court did not abuse its discretion in denying Simmons's Rule 60(b) motion. We therefore **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

**United States Court of Appeals for the Sixth Circuit**

**U.S. Mail Notice of Docket Activity**

The following transaction was filed on 09/17/2024.

**Case Name:** Latausha Simmons v. City of Southfield, MI, et al
**Case Number:** 23-1724

**Docket Text:**
ORDER filed : We find that the district court did not abuse its discretion in denying Simmons's Rule 60(b) motion. We therefore AFFIRM the district court's order. Mandate to issue. Decision not for publication. Pursuant to FRAP 34(a)(2)(C). Eugene E. Siler, Jr., Circuit Judge; Raymond M. Kethledge, Circuit Judge and Eric E. Murphy, Circuit Judge.

**The following documents(s) are associated with this transaction:**
Document Description: Order

**Notice will be sent to:**

Ms. Latausha Simmons
20500 Dean Street
Detroit, MI 48234

**A copy of this notice will be issued to:**

Mr. David Daniel Burress
Ms. Kinikia D. Essix
Mr. T. Joseph Seward
Ms. Sheri L. Whyte