

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

DAVID YARIEL RODRIGUEZ,

Plaintiff,

v.

NICK RODRIGUEZ, LT. WHITTED, LT.
DOUSIS, C/O CIESCO, C/O BAKEWELL,
and C/O DOROSH,

Defendants.

Civil Action No.
3:21 - CV - 1260 (CSH)

AUGUST 16, 2022

RULING ON PLAINTIFF'S MOTION TO REOPEN CIVIL SUIT [Doc. 8]

HAIGHT, Senior District Judge:

I. INTRODUCTION

Pro se prisoner David Yariel Rodriguez, currently incarcerated at MacDougall-Walker Correctional Institution ("MacDougall-Walker"), brings this action pursuant to 42 U.S.C. § 1983, alleging constitutional violations against five Defendants, state employees and officials at Cheshire Correctional Institution and Garner Correctional Institution, two prisons where he was previously housed.¹ On December 23, 2021, the Court dismissed Plaintiff's case without prejudice in light of

¹ According to the Connecticut Department of Correction ("DOC") website, Plaintiff Rodriguez is currently serving a six-year sentence for "larceny, second degree." *See* http://www.ctinmateinfo.state.ct.us/detailsupv.asp?id_inmt_num=417046. Also, the Court notes that the DOC website shows that Plaintiff is actually now housed at Corrigan-Radgowski Correctional Center ("Corrigan") but has not informed the Clerk's Office about this change of address. Pursuant to Local Civil Rule 83.1(c), a self-represented party must "provide an address where service can be made upon [him]" so shall notify the Court of any change of address. D. Conn. L. Civ. R. 83.1(c)(2). If Plaintiff is in fact housed at Corrigan, he is in violation of this Rule, having failed to inform the Court of his new address.

his failure to submit a ledger sheet in support of his motion to proceed *in forma pauperis* ("IFP"). Doc. 7 ("Order of Dismissal"). Magistrate Judge Thomas O. Farrish had issued a "Notice of Insufficiency" which specifically ordered Plaintiff to "submit a Ledger Sheet showing the past six months transactions" by October 20, 2021. Doc. 5. At the time this action was dismissed, two months had elapsed since the deadline for Plaintiff to file the requisite ledger sheet. Doc. 7. Once dismissed, the action was terminated. In response to dismissal, Plaintiff filed the pending "Motion to Reopen Civil Suit." Doc. 8. The Court resolves that motion herein.

II. DISCUSSION

Plaintiff moves the Court to reopen his case, arguing that with respect to Magistrate Judge Farrish's "Notice of Insufficiency," "Plaintiff *never* recieved [sic] nor was he ever notified of any documents sent from the court." Doc. 8, ¶ 2 (emphasis in original). He states that at the time the "Notice of Insufficiency" was issued, he was housed at MacDougall-Walker so that "Legal Mail" at that facility should have provided him with his legal documents, such as that Notice. *Id.* ¶¶ 3-4. He claims that if he had received legal documents, he would have had to sign a "Legal Mail" sheet, which would have proven he had received the "Notice of Insufficiency." *Id.* ¶ 4. Plaintiff thus asserts that the lack of his signature "prove[s] he never failed to respond." *Id.*

Because Plaintiff's failure to respond to the "Notice of Insufficiency" was not his fault, he asks the Court to "re-open [his] civil suit." *Id.* ¶ 5. He states that in failing to provide him with his legal documents, the DOC failed to conform with the terms of the Prisoner Electronic Filing Program, thereby "hinder[ing] Plaintiff's civil suit. *Id.* Moreover, if he had been aware of the insufficiency regarding his IFP motion, "he would have corrected said mistake." *Id.* ¶ 6.

On its face, Plaintiff's pending motion can be construed to request the Court to reopen his

case based on his excusable inability to respond to the "Notice of Insufficiency." In this circumstance, there are two potential provisions of Federal Rule of Civil Procedure 60(b) that may apply. Rule 60(b) states, in relevant part:

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;
... or

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(1), (6).

The Second Circuit has repeatedly held that subsections (1) and (6) of Rule 60(b) are mutually exclusive in that conduct warranting application of one subsection cannot be found simultaneously to fall within the other. *See, e.g., Stevens v. Miller*, 676 F.3d 62, 67 (2d Cir. 2012) ("Where a party's Rule 60(b) motion is premised on grounds fairly classified as mistake, inadvertence, or neglect, relief under Rule 60(b)(6) is foreclosed."); *Sec. Plans, Inc. v. Cuna Mut. Ins. Soc'y*, 726 F. App'x 17, 21 (2d Cir. 2018) ("Rule 60(b)(1) and Rule 60(b)(6) are mutually exclusive, such that any conduct which generally falls under the former cannot stand as a ground for relief under the latter.") (quoting *Stevens*, 676 F.3d at 67). *See also PRC Harris, Inc. v. Boeing Co.*, 700 F.2d 894, 898 (2d Cir. 1983) (Rule 60(b)(6) is applicable "only where the more specific provisions do not apply") (collecting cases).²

² As this Court has previously noted:

Relief under Rule 60(b)(6) is less well-defined. The Second Circuit has described the rule as "a 'grand reservoir of equitable power to do justice in a particular case'" even while acknowledging "that [the] reservoir is not bottomless."

In addition, "[g]enerally, courts require that the evidence in support of the [Rule 60(b)] motion to vacate a final judgment be highly convincing, that a party show good cause for the failure to act sooner, and that no undue hardship be imposed on other parties." *Kotlicky v. U.S. Fid. & Guar. Co.*, 817 F.2d 6, 9 (2d Cir. 1987) (citations and internal quotations omitted).

In the case at bar, Plaintiff specifically asserts that the reason he did not comply with Magistrate Judge Farrish's "Notice of Insufficiency" was because he did not receive it. Doc. 8, ¶¶4-6. The Court will thus analyze his request for relief from dismissal of his case under "mistake, inadvertence, . . . or excusable neglect" in subsection (b)(1).

As a threshold matter, Rule 60(b)(1) has a time limitation. Applying that provision, Plaintiff's motion is subject to the requirement that it was "made within a reasonable time" and "no more than a year after the entry of the judgment or order." Fed. R. Civ. P. 60(c)(1). Plaintiff filed his motion less than a month following dismissal of his case so he has filed in a reasonable, timely manner.

Furthermore, there will be no "undue hardship" imposed on other parties if the case is reopened. No defendant has yet been served with the summons and complaint. Under 28 U.S.C. § 1915A, it is incumbent on the Court to screen "a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A. Until it issues an "Initial Review Order" ("IRO"), the Court has not determined which claims may proceed and/or which ones must be dismissed as "frivolous, malicious, or fail[ing] to state a claim upon which relief may be granted; or (2) seek[ing] monetary relief from a

Mirlis v. Greer, No. 3:16-CV-00678 (KAD), 2022 WL 959915, at *3 (D. Conn. Mar. 30, 2022) (quoting *Stevens*, 676 F.3d at 67).

defendant who is immune from such relief," *id.* § 1915A(b)(1)-(2). Only when viable claims are identified in the IRO may the relevant defendants in the action be served.

Turning to the motion's substance, if as Plaintiff claims, he did not receive the "Notice of Insufficiency," he was not able to respond. As proof, he states that the "Legal Mail" at MacDougall-Walker did not inform him that legal documents had been sent to him and/or secure his signature for receipt. Doc. 8, ¶¶ 3-6. There is no documentation attached to his motion, but he avers that this is what occurred. *Id.* ¶ 4. Due to the potential for mis-delivery and/or failure to deliver mail in an institutional setting such as a prison, the Court accepts Plaintiff's word that such an omission occurred this one time and finds that there exist adequate grounds to find "mistake, inadvertence, . . . or excusable neglect." Fed. R. Civ. P. 60(b)(1).

However, Plaintiff never paid the filing fee to commence this action and the insufficiency regarding his IFP motion (*i.e.*, his failure to submit his prison trust fund account ledger sheet) was not cured. The case cannot proceed unless the issue of the Court's filing fee is resolved.

III. CONCLUSION AND ORDER

The Court hereby GRANTS Plaintiff's "Motion to Reopen Civil Suit" [Doc. 8] upon two conditions. First, the case will *only be reopened if* on or before **September 13, 2022**, Plaintiff either pays the civil case filing fee in full or renews his motion to proceed *in forma pauperis* by filing a new motion and a current ledger sheet of his prison trust fund account. Specifically, the ledger sheet must show the transactions and balances during the six months preceding this Order. *See* 28 U.S.C.A. § 1915 (a)(2) (mandating submission of prison trust fund account statement for immediately preceding 6-month period to request IFP status). If Plaintiff fails to comply with the **September 13, 2022**, deadline, his case shall remain closed.

Second, it has come to the Court's attention that Plaintiff may in fact be housed at Corrigan, instead of MacDougall-Walker, his current his address of record. *See* n. 1, *supra*. In order to proceed with this case, pursuant to Local Civil Rule 83.1(c)(2), Plaintiff is directed to update his address for service forthwith by filing a "Notice" of that address on the case docket. If Plaintiff fails to update or confirm his correct address of record on or before **September 13, 2022**, the case will remain closed. In the mean time, due to the conflicting information regarding Plaintiff's present address, the Clerk is directed to send copies of this Order to Plaintiff at both MacDougall-Walker and Corrigan to ensure delivery.

If on or before **September 13, 2022**, Plaintiff (1) pays the case filing fee or files a proper IFP motion, complete with the required ledger, and (2) updates his address, the Clerk will be directed to re-open the case in full. In that event, upon resolution of Plaintiff's filing fee for this case, the Court will review Plaintiff's Complaint and issue an IRO, 28 U.S.C. § 1915A.

It is SO ORDERED.

Dated: New Haven, Connecticut
August 16, 2022

/s/Charles S. Haight, Jr.
CHARLES S. HAIGHT, JR.
Senior United States District Judge