In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(E-Filed: September 13, 2012)

No. 03-775V

ANGEL GUILLOT, and DALE GUILLOT, parents of JACOB GUILLOT,	)	TO BE PUBLISHED
Petitioners,	)	Autism; Motion for Relief from Judgment; Motion for Reconsideration
v.	)	
SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES,	)	
Respondent.	)	

ORDER DENYING RCFC RULE 60 MOTION FOR RELIEF FROM A JUDGMENT OR ORDER OR, ALTERNATIVELY, MOTION FOR RECONSIDERATION[1]

Pending before the undersigned is petitioners' motion for relief from judgment, or, alternatively, motion for reconsideration. Judgment entered in this case on April 11, 2012 (Judgment).

For the reasons discussed more fully below, the undersigned **DENIES** petitioners' motion.

[1] Because this published order contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to delete medical or other information, that satisfies the criteria in § 300aa-12(d)(4)(B). Further, consistent with the rule requirement, a motion for redaction must include a proposed redacted decision. If, upon review, I agree that the identified material fits within the requirements of that provision, I will delete such material from public access.

I. Background

On March 8, 2012, the undersigned dismissed petitioners' claim for insufficient proof and for failure to prosecute. After entry of judgment, petitioners moved, pursuant to Rule 60 of the Court of Federal Claims (RCFC), for relief from judgment on the dismissal decision (April 24, 2012 Motion for Relief). Accompanying petitioners' motion was an affidavit executed by petitioners' counsel Michael Cave (Cave Affidavit).

In their April 24, 2012 Motion for Relief, petitioners stated that they had not received any order from the court since November 14, 2011, which included the four court-issued documents listed below.

Docket Entry	Date	Document
23	November 21, 2011	Scheduling Order
24	February 6, 2012	Order to Show Cause
25	March 8, 2012	Decision dismissing Petitioners' claim for failure to prosecute
26	April 11, 2012	Judgment

Petitioners argued that each of these four entries constituted a "mistake" or "surprise" under RCFC 60(b)(1),[2] and that their failure to comply with the various orders is excusable neglect. Alternatively, petitioners argue that if their computers were to blame, then relief is justified under RCFC 60(b)(6).

On August 15, 2012, the undersigned issued an Order Denying Petitioners' Motion for Relief from Judgment (August 15, 2012 Denial Order).

As discussed more fully in the August 15, 2012 Denial Order and prior to the dismissal of petitioners' claim, petitioners had participated in a telephonic status conference with the undersigned on November 15, 2011. During that status conference, "significant problems" with an expert report filed by petitioners on November 14, 2011 were discussed. Denial Order, pp. 2-3. In addition, specific deadlines were established during the November 15, 2011 status conference, including a deadline of February 1, 2012 for petitioners to file missing medical records. Denial Order, p. 3.

As further detailed in the August 15, 2012 Denial Order, petitioners' failure to comply with the established deadlines led to the dismissal of petitioners' claim.

[2] Petitioners cite to Rule 60(1), however it is clear the intended reference is to Rule 60(b)(1).

II. Petitioners' September 12, 2012 Motion

A. Rule 60 Motion for Relief from Judgment

In response to the August 15, 2012 Denial Order, petitioners again moved, on September 12, 2012, for relief from judgment pursuant to RCFC 60 (September 12, 2012 Motion), incorporating all the same reasons from their April 24, 2012 Motion for Relief, and purporting to "show additional reasons."

Accompanying the September 12, 2012 Motion for Relief is the affidavit of Brad Thompson, the information technology consultant for petitioners' counsel, the Cave Law Firm, L.L.C. Affidavit, ¶ 2. Mr. Thompson states that he examined the computers and server of the Cave Law Firm, L.L.C. on Tuesday, September 11, 2012 for all emails received by the server from the email address of "uscfc_cmecf@ao.uscourts.gov" between November 14, 2011 and June 8, 2012, the results of which are attached as Exhibit A to his affidavit. Thompson Affidavit, ¶¶ 4, 5.

Mr. Thompson confirms that petitioners received a "Minute Entry" on November 21, 2011. Thompson Affidavit, ¶ 8; Ex. B. But, the four emails identified above as docket entries 23, 24, 25 and 26 were not among the emails received. Thompson Affidavit, ¶¶ 9, 10, 12, & 13.

Mr. Thompson specifically responds to the affidavit of Joseph Taylor, CM/ECF Coordinator for the Court of Federal Claims, that was filed as an exhibit (Taylor Affidavit) to the undersigned's August 15, 2012 Denial Order, disputing an inference drawn by Taylor. In his affidavit, Mr. Taylor affirmed that he spoke with Michael Cave in May of 2012, and during that conversation he both added a new email address to Mr. Cave's CM/ECF account, and also tested the account by regenerating an electronic notification that had been previously sent on March 8, 2012. Taylor Affidavit, ¶ 5. Mr. Taylor states that Mr. Cave "confirmed that he received both of the test notifications that were sent to him," which Mr. Taylor presumed meant both the primary email address for the account and the newly added email address. Taylor Affidavit, ¶ 5.

Mr. Thompson acknowledges that Mr. Cave received the regenerated email at the newly added email address, Thompson Affidavit, ¶ 16; Ex. C, but states that the server log showing the results of his search of the primary email address does not include the same regenerated email. Thompson Affidavit, ¶¶ 14, 15; Ex. A.

Described as "additional reasons" for relief from judgment, petitioners offered Mr. Thompson's affidavit and his supporting exhibits as new evidence with their September 12, 2012 Motion.

Although the Thompson Affidavit provides more detail than the earlier filed Cave Affidavit, it provides no new evidence. Mr. Cave previously affirmed that both his and his secretary's computers had been "checked for receipt of any court orders in this matter, and a search ha[d] revealed none." Affidavit, ¶ 2. Mr. Thompson merely provides the same information, albeit in more detail and with corroborating exhibits.

In the August 15, 2012 Denial Order, the undersigned considered the possibility that the court's electronic notification system could have failed – the argument of petitioners in both their April 24, 2012 and September 12, 2012 Motions – and found that the failure of the petitioners to monitor their case docket is not the type of excusable neglect contemplated by RCFC 60(b)(1). Order, p. 10 (citing Silivanch v. Celebrity Cruises, Inc., 333 F.3d 355, 366 (2d Cir. 2003) (citing Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993))).

In addition, as discussed in detail in the August 15, 2012 Denial Order, because petitioners' underlying vaccine claim was untimely filed, granting the requested relief from judgment would be a futile effort. Order, pp. 7-9 (citing Curtis v. United States, 61 Fed. Cl. 511, 512-13 (2004)).

The standards for relief under RCFC 60(b)(1) and 60(b)(6) were set forth in detail in the August 15, 2012 Order. Order, pp. 5-7. Here, again, petitioners fail to satisfy the standard for excusable neglect.

B. Motion for Reconsideration

Petitioners alternatively have moved for "reconsideration of the Court's August 15, 2012, Order," denying relief from judgment. Petitioners cite to no particular rule in support of their motion.

As provided in RCFC 59(b)(1), a motion for reconsideration "must be filed no later than 28 days after the entry of judgment." Rule 59 is expressly a rule for reconsideration of the judgment. The "Court's August 15, 2012, Order" was not the judgment in this matter, and hence is not an order for which petitioners may seek Rule 59 reconsideration.[3]

[3] Petitioners would similarly find no relief from Vaccine Rule 10(e). Vaccine Rule 10 addresses a decision on the petition with respect to whether an award of compensation is to be made, Rule 10(a), and a motion for reconsideration is due within 21 days after the issuance of the decision, if a judgment has not been entered and no motion for review under Vaccine Rule 23 has been filed. Judgment has been entered in this case, so Vaccine Rule 10(e) would be unavailable for reconsideration of the March 8, 2012 Decision. The August 15, 2012 Denial Order was not a decision on the petition, hence Vaccine Rule

Judgment in this matter was entered on April 11, 2012, making a Rule 59 motion for reconsideration due no later than May 9, 2012. Petitioners filed their instant motion for reconsideration on September 12, 2012. Were the undersigned to consider the motion for reconsideration of the judgment, it would be untimely, as it was filed well past the deadline provided in the RCFC.

For the foregoing reasons, petitioners' Motion for Relief for a Judgment or Order, or Alternatively, Motion for Reconsideration is **DENIED.**

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master

10(e) is simply inapplicable to that Order. Moreover, even if a motion for reconsideration of the August 15, 2012 Denial Order were permissible under Vaccine Rule 10(e), petitioners' instant motion is untimely.