UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GORDON WAYNE WATTS,

Plaintiff,

v. Case No: 8:19–cv–829–T–36CPT

CIRCUIT COURT OF COOK COUNTY, ILLINOIS, et al.,

Defendants.
_____/

ORDER

This matter comes before the Court upon Plaintiff Gordon Wayne Watts' ("Plaintiff") Rule 59 Motion to Alter/Amend Judgment Concurrent with Rule 60 Motion for Relief from a Judgment or Order (the "Motion"). (Doc. 16). The Motion is due to be denied.

I. Background

The Court previously detailed the factual background of this action in its May 22, 2019 Order (the "Transfer Order"). (Doc. 14 at 1–3). The Transfer Order transferred the action to the United States District Court for the Northern District of Illinois because Plaintiff's choice of venue in the United States District Court for the Middle District of Florida was improper. *Id.* at 9. Plaintiff filed the Motion twenty-eight days later. (Doc. 16). Through the Motion, Plaintiff moves for the "alteration and amendment of the [May 22, 2019] judgment of this court," pursuant to Federal Rule of Civil Procedure 59(e), and "relief from judgment," pursuant to Federal Rule of Civil Procedure 60(b), on the basis of alleged "newly discovered evidence" and "the need for more time to rebut and challenge the order in question." *Id.* at 1.

Plaintiff seeks to avoid the transfer of this action to the Northern District of Illinois due to "venue bias." *Id.* at 2, 5. In support, Plaintiff attaches a May 3, 2018 order from the First District

of the Illinois Appellate Court to the Motion, which Plaintiff allegedly forgot to include with his original complaint. *Id.* at 3, 7. Plaintiff also attaches an order from the Northern District of Illinois on May 31, 2019—after this Court transferred the action—which dismissed Plaintiff's complaint with prejudice and ordered the Clerk to enter final judgment (the "Dismissal Order"). *Id.* at 8–9. Plaintiff asks the Court to both "temporarily withdraw[]" the Transfer Order and stay the Transfer Order "sufficient for the lower federal courts in Illinois to play out . . . ." *Id.* at 2, 6.

II. Legal Analysis

As Plaintiff moves for relief under Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure, the Court begins its analysis with an examination of those Rules. For the reasons stated below, the Court will deny Plaintiff's requested relief under Rule 59(e) and Rule 60(b). Furthermore, although the Court construes the Motion as a motion for reconsideration of the Transfer Order, the Court will also deny such request for reconsideration.

a. Rule 59(e)

Rule 59(e) provides, "A motion to alter or amend a *judgment* must be filed no later than 28 days after the entry of *judgment*." Fed. R. Civ. P. 59(e)(emphasis added). "[T]he only real limitation on the type of motion permitted [under Rule 59(e)] is that it must request a substantive alteration of the *judgment* . . . ." 11 Charles Alan Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 2810.1 (3d ed. 2019). Thus, Rule 59(e) applies only to judgments. A "judgment" is "[a] court's final determination of the rights and obligations of the parties in a case." *Black's Law Dictionary*, *supra*, at 858. Federal Rule of Civil Procedure 54(a) also provides that "judgment," as used in the Rules, "includes a decree and any order from which an appeal lies." Fed R. Civ. P. 54(a). This Rule's reference to "any order from which an appeal lies" embraces two types of orders: (1) any "final decision" from which an appeal is allowed under 28 U.S.C. § 1291;

and (2) any appealable interlocutory order. 10 Charles Alan Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 2651 (4th ed. 2019). An order that is not appealable under either of these categories does not qualify as a "judgment" under the Rules. *Id.* A "final decision" is "one which ends the litigation on the merits and leaves nothing for the Court to do but execute the judgment." *Catlin v. U.S.*, 324 U.S. 229, 233 (1945). Furthermore, orders transferring actions to other courts under 28 U.S.C. §§ 1404(a) and 1406(a) are non-appealable interlocutory orders. *Stelly v. Emp'rs Nat'l Ins. Co.*, 431 F.2d 1251, 1253 (5th Cir. 1970).[1] *See also* Wright, Miller, et al., *supra*, at § 2651 (providing examples of appealable interlocutory orders).

Here, the Transfer Order did not make a final determination of the rights and obligations of Plaintiff; instead, the Transfer Order merely transferred the case to the Northern District of Illinois. (Doc. 14 at 9). Furthermore, the Transfer Order is not a "final decision" under *Catlin* because the Court's transfer of the action to the Northern District of Illinois did not rule on the merits of Plaintiff's claims or conclude the litigation. Indeed, the litigation continued, and the Dismissal Order subsequently dismissed Plaintiff's operative complaint with prejudice and directed the Clerk to enter final judgment. (Doc. 16 at 8–9). Finally, as an order transferring the action, the Transfer Order is not an appealable interlocutory order. Therefore, as the Transfer Order is not a "judgment," Rule 59(e) is inapplicable to the Transfer Order. The Court will accordingly deny the requested relief under Rule 59(e).

b. Rule 60(b)

Next, under Rule 60(b), a court may "relieve a party . . . from a final judgment, order, or proceeding" based on the following grounds:

[1] In *Bonner v. City of Prichard, Ala.*, the Eleventh Circuit Court of Appeals adopted as binding precedent all Fifth Circuit Court of Appeals decisions issued before October 1, 1981. 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The advisory committee notes to Rule 60(b) highlight that "'final' emphasizes the character of the judgments, orders[,] or proceedings from which Rule 60(b) affords relief . . . ." Fed. R. Civ. P. 60(b) Advisory Committee Note (1946 Amendment). Consequently, Rule 60(b) applies only to final judgments, final orders, or final proceedings. As explained above, the Transfer Order did not constitute a judgment because it did not make a final determination of Plaintiff's rights and obligations, it is not a "final decision," and it is not an appealable interlocutory order.

The inquiry next shifts to whether the Transfer Order constitutes a "final order" under Rule 60(b). Rule 60(b) is inapplicable to non-final orders. *Re/Max Int'l, Inc. v. Citimaxx Corp.*, No. 8:08–cv–2254–T–27TBM, 2010 WL 11508111, at *1 n.2 (M.D. Fla. Sept. 7, 2010). The test for determining whether an order is final stems from *Catlin*: "A final order is one that 'ends the litigation and leaves nothing for the Court to do but execute its judgment.'" *World Fuel Corp. v. Geithner*, 568 F.3d 1345, 1348 (11th Cir. 2009) (quoting cases that cite *Catlin*). Thus, even an order that is final with regard to a particular issue, but does not conclude the litigation on the merits, is not a final order. *In re Sunstate Dairy & Food Products Co., L.P.*, No. 92–570–CIV–T–17, 1992 WL 161138, at *1 (M.D. Fla. June 29, 1992). An order transferring a case from one court to another court is not a final order subject to appeal. *Alimenta (USA), Inc. v. Lyng*, 872 F.2d 382, 385 (11th Cir. 1989). *See also Stelly*, 431 F.2d at 1253 ("It is hard to see how any order could be

less 'final' than one which merely transfers an action for trial from one district to another in the federal judicial system, whether the transferee district is in the same circuit or a different one.").

As previously discussed, the Transfer Order merely transferred the action to another forum, rather than dismissing the action entirely, because this Court lacked venue. (Doc. 14 at 9). In transferring the action, the Court did not rule on the merits of Plaintiff's claims or end the litigation. Following the transfer, the Northern District of Illinois entered the Dismissal Order, which dismissed Plaintiff's operative complaint with prejudice and directed the Clerk to enter final judgment in the action. (Doc. 16 at 8–9). Therefore, the Transfer Order is not a final order under Rule 60(b).

Finally, as demonstrated above, Rule 60(b) also applies to final proceedings. A "proceeding" refers to "[t]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment." *Black's Law Dictionary*, *supra*, at 1241. Examples of a proceeding include the initiation of the action, the pleadings, the taking of testimony prior to trial, motions made in the action, the trial, and the judgment. *Id.* The cited examples are clearly distinguishable from a court order transferring an action to another court. Furthermore, to illustrate an example of a final proceeding, some federal appellate courts have found that a voluntary dismissal without prejudice constitutes a final proceeding under Rule 60(b). *See, e.g.*, *Yesh Music v. Lakewood Church*, 727 F.3d 356, 362–63 (5th Cir. 2013); *Nelson v. Napolitano*, 657 F.3d 586, 589 (7th Cir. 2011). Here, the Court elected to transfer the action to another court, rather than dismiss it. As previously explained, the litigation continued following the Court's transfer of the action. Thus, even assuming the Transfer Order constitutes a proceeding, the Court is not convinced the Transfer Order constitutes a final proceeding.

Therefore, because the Transfer Order does not constitute a final judgment, final order, or final proceeding, Rule 60(b) is inapplicable to the Transfer Order. Accordingly, the Court will deny Plaintiff's requested relief under Rule 60(b).

c. Reconsideration

Although the Court will deny Plaintiff's requested relief under Rule 59(e) and Rule 60(b), the nature of Plaintiff's requested relief leads the Court to construe the Motion as a motion for reconsideration of the Transfer Order. As demonstrated above, the Transfer Order is not a final order. Courts have interpreted Rule 54(b) as applying to reconsideration of non-final, interlocutory orders. *See, e.g.*, *Delta Health Grp., Inc. v. U.S. Dep't of Health & Human Servs.*, 459 F. Supp. 2d 1207, 1227 (N.D. Fla. 2006). "Rule 54(b) provides that a nonfinal, interlocutory order 'is subject to revision at any time *before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties*.'" *Id.* at 1227 (quoting Fed. R. Civ. P. 54(b)) (emphasis added). "While Rule 54(b) does not provide specific grounds for revision, a court has the inherent power to revise its orders in the interest of justice." *CSX Transp., Inc. v. City of Pensacola, Fla.*, 936 F. Supp. 885, 889 (11th Cir. 1995). Reconsideration of a prior order is considered an "extraordinary remedy" and, therefore, a power that courts should use sparingly. *Am. Ass'n of People With Disabilities v. Hood*, 278 F. Supp. 2d 1337, 1339 (M.D. Fla. 2003).

Here, because the Transfer Order is a non-final, interlocutory order, Plaintiff's construed request for reconsideration of the Transfer Order falls under Rule 54(b). However, under Rule 54(b), the Court may revise the Transfer Order only prior to "the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Fed. R. Civ. P. 54(b). The Dismissal Order dismissed Plaintiff's complaint with prejudice and directed the Clerk to enter final judgment and close the case. (Doc. 16 at 8–9). The Clerk of Court for the Northern District of Illinois entered

final judgment in favor of Defendants on May 31, 2019, which adjudicated the claims and the rights and liabilities of all the parties in the action. *Watts v. Circuit Court of Cook Cnty., Ill., et al.*, No. 1:19–cv–03473 (N.D. Ill.), (Doc. 19). Thus, the proper time for Plaintiff to seek reconsideration of the Transfer Order elapsed before Plaintiff filed the Motion. Consequently, the Court will deny the construed request for reconsideration of the Transfer Order.

III. Conclusion

Accordingly, it is hereby **ORDERED** that the Rule 59 Motion to Alter/Amend Judgment Concurrent with Rule 60 Motion for Relief from a Judgment or Order, (Doc. 16), is **DENIED**.

DONE AND ORDERED in Tampa, Florida on July 8, 2019.

Charlene Edwards Honeywell

Charlene Edwards Honeywell
United States District Judge

Copies to:
Counsel of Record and Unrepresented Parties, if any