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

Richmond Division

VIRGINIA ENWEREMADU, et al,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	File No. 91-598
	)	
J.L. REICHLIN, et al,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

This matter is before the Court on Plaintiff's Motion to Alter and Amend Judgment and Relief from Judgment, pursuant to Fed. R. Civ. P. 59(e) and 60(b)(1) and (6). Plaintiff has also moved the Court for leave to file an amended complaint. For the reasons stated below, these motions are DENIED.

BACKGROUND

On May 13, 1992, the Court issued an Order and Memorandum Opinion dismissing Ms. Enweremadu's federal claims with prejudice and declining to exercise jurisdiction over her state law claims. The Plaintiff's Section 1983 claim against local police officers was dismissed because Ms. Enweremadu failed to allege a violation of the Fourteenth Amendment, instead relying solely on alleged violations of the First and Fourth Amendments. Despite the fact that the Defendant's motion to dismiss clearly warned her of this omission, at no time prior to dismissal did the Plaintiff request leave to amend her Complaint to include a Fourteenth Amendment

violation. Ms. Enweremadu is represented by counsel.

MOTION FOR RELIEF FROM JUDGMENT

The Plaintiff, based on Rule 60(b), argues that the Court should relieve her of the judgment entered on May 13, 1992. Rule 60(b) states in relevant part:

> On motion and upon such terms as are just, the court may relieve a party or a party's 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 justifying relief from the operation of the judgment.

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

Plaintiff essentially argues that her pleading errors were a result of "excusable neglect."[1] Ms. Enweremadu's entire excuse is summed up in one confusing sentence: "What is involved in this case is an inadvertent rather than a careless omission by plaintiffs' counsel to recite the Fourteenth Amendment in the jurisdictional portion of the Complaint." (Pl. Br. at 2.) The Plaintiff also contends that it never filed a motion to amend the complaint because it "misunderstood" the Defendant's argument that an excessive force claim under 42 U.S.C. § 1983 must emanate from both the Fourteenth and Fourth Amendments, not just from the latter. Plaintiff's counsel does not clarify how his inadvertence

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[1]The Plaintiff's reliance on Fed. R. Civ. P. 60(b)(6) is misplaced. Relief from a judgment is only granted under this catch-all provision in cases in which a judgment was obtained by the improper conduct of the prevailing party or where a judgment resulted from the excusable default of the losing party under circumstances going beyond the earlier clauses of the rule. See 11 C. Wright & A. Miller, Federal Practice and Procedure § 2864 at 213 (1973). Neither scenario is present in this case.

can be construed as something less than pure carelessness, nor does he explain how he could have possibly not understood the thrust of the Defendant's rather simple motion to dismiss.

Before relief from a judgment may be granted pursuant to Rule 60(b), the moving party must first demonstrate the existence of one of the grounds for relief set forth in the Rule. Mere incantation of the words "excusable neglect" without evidence of an acceptable excuse or justification for the moving party's errors is not a sufficient basis for relief. See, e.g., Park Corp. v. Lexington Ins. Co., 812 F.2d 894 (4th Cir. 1987). Plaintiff herself concedes that oversights which rise to the level of ignorance or carelessness will not provide a litigant or attorney for relief under Rule 60(b). See, e.g., Cessna Finance Corp. v. Bielenberg Masonry, 715 F.2d 1442 (10th Cir. 1983).

The argument made by the Defendant in its motion to dismiss was simply that it is the Fourteenth Amendment that constrains the conduct of state and local officials in the same manner that the First and Fourth Amendments restrain the behavior of federal officials. Thus, by failing to allege a violation of the Fourteenth Amendment, Ms. Enweremadu failed to state a claim upon which relief can be granted. It is hard to believe that this elementary argument could have been misunderstood by experienced counsel. Moreover, any conceivable confusion should have been eliminated by the Defendant in his Reply Brief which warned Plaintiff that she had "completely misse[d] the point." (Def. Rep. Br. at 1.)

Even if Plaintiff's counsel did misunderstand the thrust of the Defendant's motion to dismiss, this misunderstanding does not rise to the level of "excusable neglect." As one commentator has written:

> [The moving party] must make some showing of why he was justified in failing to avoid mistake or inadvertence. Gross carelessness is not enough. Ignorance of the rules is not enough, nor is ignorance of the law.

11 C. Wright & A. Miller, Federal Practice and Procedure 2858 at 170 (1973); see also, Byrd v. City of Fayatteville, 110 F.R.D. 71, 73-74 (E.D.N.C. 1986) ("If [excusable neglect] is to include a mere palpable mistake by experienced counsel, the requirement will be meaningless."), aff'd without op., 819 F.2d 1137 (4th Cir. 1987); In re Perry, 336 F. Supp. 828 (W.D. Va. 1971) ("[T]here must be some justification for the party's oversight, inadvertence or neglect.").

Plaintiff's assertion that she misunderstood the basis for the Defendant's motion is simply not credible. Even if true, however, such assertion reflects extreme carelessness for which no acceptable excuse has been alleged or shown.

MOTION TO AMEND COMPLAINT

Once a judgment is entered, the filing of an amendment to a complaint cannot be allowed until the judgment is set aside or vacated under Rule 59 or Rule 60. Courts have not construed the broad amendment policy of Rule 15(a) in a manner which would render these other provisions meaningless. In other words, despite the liberal amendment policy of Rule 15(a), a party moving for

amendment after judgment has been entered will be successful only if she first demonstrates that the judgment should be set aside for one of the six reasons specified in Rule 60(b).

CONCLUSION

Because Plaintiff's counsel has demonstrated no justification for his carelessness, the Court finds that the Plaintiff has failed to show "excusable neglect" and, therefore, DENIES the Plaintiffs' motion for relief from judgment. Accordingly, the Plaintiffs' motion to amend the Complaint is also DENIED.

This is a difficult issue. On the one hand, the errors made by Plaintiff's counsel were serious and obvious, although the mistakes were such that they could have been rectified with only minimal effort. Such carelessness should generally not be rewarded by allowing a party to return to the status quo. On the other hand, the person to pay the real price for her attorney's carelessness is the Plaintiff, not her lawyer. Unfortunately, the situation Ms. Enweremadu finds herself in, through no fault of her own, is not uncommon. And while sympathy for such plaintiffs is appropriate, it should not cause courts to easily dismiss the strictures of Rule 60(b) nor to disregard the worthy aims of finality and judicial expediency.

Plaintiff is ADVISED that she may be able to refile her case in state court. Although the Court dimsissed Ms. Enweremadu's federal claims with prejudice, the Court failed to exercise supplemental jurisdiction over her state law claims. Thus, Ms.

Enweremadu, if she has a meritorious claim, may still be able to get some relief in state court.

Let the Clerk send a copy of this Memorandum Opinion and the accompanying Order to all counsel of record.

DATE

UNITED STATES DISTRICT JUDGE