Rules of Civil Procedure Civil Procedure Rule 60: Relief from judgment or order

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(a) Clerical mistakes

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistake; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of review, of error, of audita querela, and petitions to vacate judgment

are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Reporter's notes

(2013) The 1973 Reporter's Notes to Rule 60, second paragraph state in part: "...[B]ecause a Rule 60(b) motion does not affect the finality of the judgment, it does not toll the time for taking an appeal." In 2013, however, an amendment to Rule 4(a) of the Massachusetts Rules of Appellate Procedure provided that a Rule 60 motion, if served within ten days after entry of judgment, tolls the time period to claim an appeal.

The 2013 amendment to Mass. R. A. P. 4(a) was intended to address the confusion that sometimes arose when a post-judgment motion, denominated a motion for "reconsideration," was served within ten days after entry of judgment. Since the text of the Massachusetts Rules of Civil Procedure does not refer to motions for reconsideration, a motion for reconsideration, if served within ten days of judgment, could have been treated as a motion under Rule 59 (for new trial or to alter or amend judgment) or as a motion under Rule 60(b) (for relief from judgment). If treated as a Rule 59 motion, the motion for reconsideration would have operated to toll the time period to claim an appeal. If treated as a Rule 60(b) motion, the motion for reconsideration would not have served to toll the time period to claim an appeal. Mass. R. A. P. 4(a), as it existed prior to the 2013 amendment. The 2013 amendment to Mass. R. A. P. 4(a) eliminates this potential for confusion by tolling the time period to claim an appeal where a post-judgment motion for reconsideration is served within ten days after entry of judgment.

See 2013 Reporter's Notes to Mass. R. A. P. 4(a).

(1973) Rule 60 encompasses two basic situations: (a) the correction of mere clerical mistakes in the judgment or other part of the record, and (b) substantive relief from a final judgment. Included in Rule 60(b) are all possible grounds for relief from a final judgment. A motion under Rule 60(b) performs the same function as the former Massachusetts procedures of writ of review, writ of error, writ of audita querela and petition to vacate judgment. As will be noted below, Rule 60 preserves the substance of these remedies. But with the adoption of Rule 60, the relief is available through simple "motion" under Rule 60(b). In addition, Rule 60 does not prohibit the court from entertaining an independent action to relieve a party from a judgment.

A motion under Rule 60 is addressed to the trial judge's judicial discretion, and is generally not reviewable except for a clear abuse of discretion. Farmers Co-operative Elevator Association v. Strand, 382 F.2d 224 (8th Cir.1967). Further, because a Rule 60(b) motion does not affect the finality of the judgment, it does not toll the time for taking an appeal. Compare Rule 62(e).

Rule 60(a) is limited to the correction of purely clerical errors. Errors within the purview of Rule 60(a) include "misprisions, oversights, omissions, unintended acts or failures to act." First National Bank v. National Airlines, 167 F.Supp. 167 (S.D.N.Y.1958). In effect, Rule 60(a) merely seeks to ensure that the record of judgment reflects what actually took

place. Substantive errors or mistakes are outside the scope of Rule 60(a). See Stowers v. United States, 191 F.Supp. 795 (N.D.Ga.1961) holding that failure to consider interest as an element of a judgment is a substantive matter beyond Rule 60(a).

Further, Rule 60(a) does not apply unless the mistake springs from some oversight or omission; it does not cover mistakes which result from deliberate action. Ferraro v. Arthur M. Rosenberg Co., Inc., 156 F.2d 212 (2d Cir.1946). The word "record" in Rule 60(a) refers not only to process, pleadings, and verdict but also to evidentiary documents, testimony taken, instructions to the jury, and all other matters pertaining to the case of which there is a written record. Rule 60(a) covers mistakes or errors of the clerk, the court, the jury, or a party. The taking of an appeal does not divest the trial court of power to correct errors. However, once the case is docketed in the appellate court, the trial court can only grant relief after first obtaining the appellate court's leave.

Rule 60(b) affords a "Party or his legal representative" a means of obtaining substantial relief from a "final judgment, order or proceeding." Interlocutory judgments thus do not fall within Rule 60(b). They remain subject to the complete power of the court rendering them to afford such relief from them as justice requires. This has long been the federal rule. John Simmons Co. v. Grier Brothers Co., 258 U.S. 82 (1922). Rule 60(b) leaves this unchanged. Rule 60(b) incorporates all possible grounds for relief from judgment, such relief must be sought by "motion as prescribed in these rules or by an independent action." The phrase "independent action" has been interpreted to mean, not that a party could still utilize the older common law and equitable remedies for relief from judgment, but rather "that courts no longer are to be hemmed in by the uncertain boundaries of these and other common law remedial tools." Klapprott v. United States, 335 U.S. 601 (1949). The court now has power "to vacate judgments whenever such action is appropriate to accomplish justice." Id. Thus, as presently interpreted, Rule 60(b) contains the substance of the older remedies while simplifying the procedure for obtaining such relief.

Rule 60(b)(1) allows relief for "mistake, inadvertence, surprise or excusable neglect." It applies to acts of the court, parties or third persons. Thus Rule 60(b)(1) has been held to permit granting of relief where the court overlooked one small item of damages concerned with the major issues of the case. Southern Fireproofing Co. v. R.F. Ball Construction Co., 334 F.2d 122 (8th Cir.1964). Similarly, the oversight of an attorney's law clerk in failing to serve a more definite statement of claim may be ground for vacating a judgment dismissing the complaint under the mistake or inadvertence clause of Rule 60(b)(1). Weller v. Socony Vacuum Oil Co. of New York, 2 F.R.D. 158 (S.D.N.Y.1941). Where a default judgment was based on a misunderstanding as to appearance and representation by counsel, relief was granted under Rule 60(b)(1). Standard Grate Bar Go. v. Defense Plant Corp., 3 F.R.D. 371 (M.D.Pa.1944).

The "excusable neglect" clause of the section has been frequently interpreted. It seems clear that relief will be granted only if the party seeking relief demonstrates that the mistake, misunderstanding, or neglect was excusable and was not due to his own carelessness. See Petition of Pui Lan Yee, 20 F.R.D. 399 (N.D.Cal.1957); Kahle v. Amtorg Trading Corp., 13 F.R.D. 107 (D.N.J.1952). The party seeking the relief bears the burden of justifying failure to

avoid the mistake or inadvertence. The reasons must be substantial. For example, the misplacing of papers in the excitement of moving an attorney's office was held not to constitute excusable neglect sufficient to relieve the party from a default judgment entered for failure to file an answer. Standard Newspaper Inc. v. King, 375 F.2d 115 (2nd Cir.1967). Likewise, ignorance of the rules of civil procedure has been held not to be "excusable neglect." Ohliger v. U.S., 308 F.2d 667 (2nd Cir.1962).

Rule 60(b)(2) affords a party relief from a final judgment, order or proceeding on the ground of newly discovered evidence.

The movant bears the burden of showing that the evidence could not have been discovered by due diligence in time to move for a new trial under Rule 59(b). See Flett v. W.A. Alexander & Co., 302 F.2d 321, 324 (7th Cir.), cert. denied, 371 U.S. 841 (1962):

"Rule 60(b) provides for extraordinary relief and may be invoked only upon a showing of exceptional circumstances."

It is also settled practice that the phrase "newly discovered evidence" refers to evidence in existence at the time of trial but of which the moving party was excusably ignorant. Brown v. Penn. R.R., 282 F.2d 522 (3rd Cir.1960), cert. denied 365 U.S. 818 (1961). The results of a new physical examination are not "newly discovered evidence" within the meaning of the Rules, Ryan v. U.S. Lines Co., 303 F.2d 430 (2nd Cir.1962).

Finally, the evidence must be of a material nature and so controlling as probably to induce a different result. Giordano v. McCartney, 385 F.2d 154 (3rd Cir.1967).

Rule 60(b)(3) allows relief from a final judgment, order or proceeding on the basis of "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party".

The section does not limit the power of the court to:

1) entertain an independent action to enjoin enforcement of a judgment on the basis of fraud; or

2) set aside a judgment on its own initiative for fraud upon the court.

Since neither the fraud nor misrepresentation is presumed the moving party has the burden of proving by clear and convincing evidence that the alleged fraud or misrepresentation exists and that he is entitled to relief.

Prior to the adoption of Federal Rule 60(b), relief was afforded for extrinsic fraud, that is, fraud collateral to the subject matter, but denied for intrinsic fraud relating to the subject matter of the action. Because of difficulty in differentiation, Rule 60(b) explicitly abolishes the distinction, at least with respect to a timely motion under Rule 60(b)(3). These distinctions

may, however continue to exist with respect to the independent action and the action of the court on its own initiative.

Rule 60(b)(3) includes any wrongful act by which a party obtains a judgment under circumstances which would make it inequitable for him to retain its benefit. Fraud covered by Rule 60(b)(3) must be of such a nature as to have prevented the moving party from presenting the merits of his case. Assmann v. Fleming, 159 F.2d 332 (8th Cir.1947). See also U.S. v. Rexach, 41 F.R.D. 180 (D.P.R.1966).

Rule 60(b)(3) refers to "misconduct of an adverse party," and thus does not literally apply to the conduct of third persons. However, it is safe to assume that if the fraud is derivatively attributable to one of the parties (as for example, fraud by his attorney), it is within Rule 60(b)(3). Even if the fraud is not attributable to one of the parties, relief may still be available through an "independent action" or the residual clause, Rule 60(b)(6).

Rule 60(b)(4) allows relief from a void judgment; it gives no scope to the court's discretion. A judgment is either void or valid. Having resolved that question, the court must act accordingly.

An erroneous judgment is not a void judgment. A judgment is void only if the court rendering it lacked jurisdiction of the subject matter or of the parties, or where it acted in a manner inconsistent with due process of law.

Although Rule 60(b)(4) is ostensibly subject to the "reasonable" time limit of Rule 60(b), at least one court has held that no time limit applies to a motion under the Rule 60(b)(4) because a void judgment can never acquire validity through laches. See Crosby v. Bradstreet Co., 312 F.2d 483 (2nd Cir.) cert. denied, 373 U.S. 911 (1963) where the court vacated a judgment as void 30 years after entry. See also Marquette Corp. v. Priester, 234 F.Supp. 799 (E.D.S.C.1964) where the court expressly held that clause Rule 60(b)(4) carries no real time limit.

Finally, a party may obtain relief from a void judgment through an independent action to enjoin its enforcement.

Rule 60(b)(5) affords relief if "the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." The time for moving under Rule 60(b)(5) is stated to be a "reasonable time", to be determined in light of all the circumstances of the case.

It is important to note that relief under this clause is available only where the judgment is based on a prior judgment which has been reversed or otherwise vacated. Rule 60(b)(5) may not be used as a substitute for appeal. It does not authorize relief from a judgment on the ground that the law applied by the court in making its adjudication has been subsequently overruled or declared erroneous in another and unrelated proceeding. Berryhill v. United States, 199 F.2d 217 (6th Cir.1952).

Rule 60(b)(5) significantly affects appellate procedure where, for example, a judgment is based upon a prior judgment and the two judgments are appealed simultaneously. In this situation it would be proper for the appellate court to consolidate the two appeals and make a final adjudication based on both judgments. See Butler v. Eaton, 141 U.S. 240 (1891).

The third clause of Rule 60(b)(5) only applies to judgments having a prospective effect, as, for example, an injunction, or a declaratory judgment. It does not apply in the usual money damages situation because such a judgment lacks prospective effect. Ryan v. U.S. Lines Co., 303 F.2d 430 (2d Cir.1962). Specifically, the clause allows relief from a judgment which was valid and equitable when rendered but whose prospective application has, because of changed conditions, become inequitable. This power to grant relief from the prospective features of a judgment has always been clearly recognized in equity. See State of Pennsylvania v. Wheeling & Belmont Bridge Co., 18 How. 421 (1855).

Rule 60(b)(6) contains the residual clause, giving the court ample power to vacate a judgment whenever such action is appropriate to accomplish justice. Pierre v. Bemuth, Lembeke Co., 20 F.R.D. 116 (S.D.N.Y.1956). Rule 60(b)(6) is, however, subject to two important internal qualifications. First, the motion must be based upon some other reason than those stated in Rule 60(b)(1)-(5); second, the other reason urged must be substantial enough to warrant relief.

A motion under Rule 60(b)(5) or (6) must be made within a "reasonable time." A motion under Rule 60(b)(4) probably has, as noted above, no effective time limit.

Motions under Rule 60(b)(1)-(3) are also subject to a "reasonable time" limitation which may never exceed one year after the judgment, order or proceeding in question. Further, Rule 60(b) explicitly prohibits the enlargement of Rule 60(b) time limits.

The saving clause in Rule 60(b) which allows the court to set aside a judgment for fraud upon the court contains no time limit. Likewise, the time limitations of Rule 60(b) do not apply to the independent action preserved by the rule. Presumably, concepts of reasonableness and laches would control.

When equitable principles warrant relief a party may obtain relief even though time for a Rule 60(b) motion has expired, through an independent action on the basis of accident, fraud, mistake, or newly discovered evidence. West Virginia Oil & Gas Co. v. George E. Breece Lumber Co., 213 F.2d 702 (5th Cir.1954). See also the Federal Advisory Committee Note of 1946:

"If the right to make a motion is lost by the expiration of the time limits fixed in these rules, the only other procedural remedy is by a new or independent action to set aside a judgment upon those principles which have heretofore been applied in such an action. Where the independent action is resorted to, the limitations of time are those of laches or statutes of limitations."

It is not clear, however, just what statute of limitations applies.

In an independent action, the same requirements outlined above with respect to motions under Rule 60(b) must be met.

There should logically be no distinction between intrinsic or extrinsic fraud, if the independent action is based on fraud. See Rule 60(b)(3), discussed above. However, it has been held that the troublesome distinction between intrinsic and extrinsic fraud is still effective with respect to independent actions and that only extrinsic fraud will support such an action. Dowdy v. Hawfield, 189 F.2d 637 (D.C.Cir.) cert. denied 342 U.S. 830 (1951).

Although nothing in Rule 60(b) so specifies, the concepts of sound judicial administration suggest that the independent action should ordinarily be brought in the court (subject to statutory venue requirements) which heard the original action.

Generally, Rule 60(b) affords the same relief formerly available. The former procedures for such relief included: (1) By general consent of all parties and the court. Brooks v. Twitchell, 182 Mass. 443, 447 (1903). (2) By motion of the prevailing party within three months, G.L. c. 250, § 14. Marsch v. Southern New England Railroad, 235 Mass. 304, 305 (1920). (3) Where the execution has been in no part satisfied, by petition to vacate judgement, brought within one year. G.L. c. 250, §§ 15-20. Gould v. Converse, 246 Mass. 185 (1923). Maker v. Bouthier, 242 Mass. 20 (1922). Shour v. Henin, 240 Mass. 240 (1922). (4) By unit of review, in some cases without petition, and generally but not always within one year. G.L. c. 250, § 21 et seq. Lynn Gas & Electric Co. v. Creditors National Clearing House, 235 Mass. 114 (1920). Carrique v. Bristol Print Works, 8 Met. 444, 446 (1844). Silverstein v. Daniel Russell Boiler Works, Inc., 268 Mass. 424 (1929). (5) By writ of error, usually within six years. Former G.L. c. 250, § 3 et seq. Lee v. Fowler, 263 Mass. 440, 443 (1928). (6) By bill in equity to compel the vacation of the judgment and to restrain its enforcement. Brooks v. Twitchell, supra at 44. Joyce v. Thompson, 229 Mass. 106 (1918). Nesson v. Gilson, 224 Mass. 212 (1916). Farquhar v. New England Trust Co., 261 Mass. 209 (1927).

In addition to the above, the remedy of audita querela also existed in Massachusetts, G.L. c. 214, § 1, but was rarely used.

Rules of Domestic Relations Procedure Domestic Relations Procedure Rule 60: Relief from judgment or order

Identical to Mass.R.Civ.P. 60

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