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States Court of Appeals
for the Third Circuit

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Assem Abulkhair v. FBI

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1278

ASSEM A. ABULKHAIR,
Appellant

v.

THE FEDERAL BUREAU OF INVESTIGATION; ROBERT S. MUELLER, III, Former Director, in His Official Capacity; JAMES B. COMEY, JR., Current Director, in His Official Capacity; AARON T. FORD, Special Agent in Charge of the FBI's Newark Division, in His Official Capacity; ALL ASSISTANT AGENTS IN CHARGE, in Their Official Capacities; ALL FBI SUPERVISORS, OFFICERS, EMPLOYEES, AGENTS, in Their Official Capacities; ALL FBI INFORMERS AND INFORMANTS, in Their Official Capacities; ALL FICTITIOUS PERSONS JOHN DOES ONE THROUGH TWENTY, in Their Official Capacities as FBI's Employees as Defendants;
UNITED STATES OF AMERICA

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2:14-cv-05677)
District Judge: Honorable Esther Salas

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
July 17, 2023

Before: HARDIMAN, PORTER, and FREEMAN, Circuit Judges

(Opinion filed: July 19, 2023)

OPINION*

PER CURIAM

Pro se appellant Assem Abulkhair appeals from the District Court’s order denying his latest post-judgment filing. Abulkhair’s civil rights action was dismissed in 2018, and we affirmed the dismissal of that action (as well as the denial of his motion to recuse). See Abulkhair v. FBI, 739 F. App’x 82 (3d Cir. 2018) (per curiam). In 2020, he filed in the District Court an emergency application “to compel the defendants to cease and desist all hostility or show cause . . . to justify their latest assassination attempts,” in which he complained that the FBI and its informants attacked him through various electronic and chemical means in his home and in public. The District Court denied the motion and we affirmed. Abulkhair v. FBI, 845 F. App’x 99 (3d Cir. 2021) (per curiam). We explained that, even liberally construing it as an attempted motion to reopen and amend, Abulkhair’s filing would not survive a motion to dismiss or the screening pursuant to 28 U.S.C. § 1915(e)(2)(B). Id. at 101. Further, we instructed him, as the District Court had before, to file a new action if he wanted to assert new claims against the named or other defendants, and to comply with applicable Federal and Local rules if he intended to seek emergency relief. Id. at 101 n.1.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

In June 2022, Abulkhair filed a document entitled “Emergency Motion to Cease and Desist All Unlawful Surveillance, Torture, and Assassination Attempts” (excess capitalization omitted), again alleging that various harms were inflicted by FBI informants. ECF No. 58, electronic pages 6–9. The District Court determined that Abulkhair had failed to heed its instructions provided in response to the 2020 “emergency” filing or to abide by this Court’s directives in that appeal. ECF No. 59 at 1–2. Construing it as a motion to reopen and amend, and/or for emergent relief, the District Court denied the motion. Abulkhair filed a timely appeal.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. The District Court’s denial of Abulkhair’s post-judgment motion is reviewed for abuse of discretion. Ahmed v. Dragovich, 297 F.3d 201, 209 (3d Cir. 2002).

We find no error with the District Court’s denial of the motion, whether construed as a motion to reopen and amend or as a motion for emergency relief. On appeal, Abulkhair argues that his recent filing was adequate under Federal Rule of Civil Procedure 15 to amend his complaint. See Appellant’s Br. at electronic page 17. However, Abulkhair’s case was dismissed in 2018, and we affirmed that judgment. Since final judgment was rendered in his case, Abulkhair cannot use Rule 15 to amend the complaint unless the judgment has been set aside or vacated under Rules 59 or 60. Ahmed, 297 F.3d at 207–08. Although a post-judgment Rule 15 motion may be construed as a motion under Rule 60, id. at 208–09, the proposed amendment does not

cure the defects in his complaint, and he has not otherwise shown why his case should be reopened.¹

For these reasons, we discern no abuse of discretion in the District Court's denial of Abulkhair's motion and will affirm the judgment of the District Court.²

¹ Rule 60(b) provides:

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;
- (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.

² To the extent that Abulkhair includes new allegations in his brief on appeal that he did not present to the District Court, we will not address them here because they are not properly before us. See Simko v. U.S. Steel Corp., 992 F.3d 198, 205 (3d Cir. 2021).