IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

MATHIS KEARSE WRIGHT, JR., Plaintiff, v. SUMTER COUNTY BOARD OF ELECTIONS AND REGISTRATION, Defendant.	CIVIL ACTION NO. 1:14-CV-42 (WLS)

DEFENDANT'S RESPONSE IN OPPOSITION TO MOTION TO RE-OPEN THE RECORD

Plaintiff concedes that this Court lacks jurisdiction over this case because the Defendant's appeal from the Court's permanent injunction is now pending before the Eleventh Circuit. Plaintiff also concedes that the information he cites as justifying further proceedings in this Court has been presented to the Eleventh Circuit. Indeed, Plaintiff has moved the Eleventh Circuit for both a limited-purpose remand and an order striking the information from the record. Accordingly, because the Eleventh Circuit is fully capable of reviewing the information, arguments, and motions presented to it, there is no need for this Court to do anything at this time. The Eleventh Circuit needs no assistance in adjudicating a case before it.

Nor is there any legal basis for this Court to act in any way. Plaintiff concedes that the Court cannot "re-open the record" as he requests, ECF No. 246 at 1, because the absence of jurisdiction deprives this Court of ability to do anything. Hence, the actual *relief* Plaintiff seeks is, by his own concession, something this Court cannot give. The motion "to re-open the record" must be denied.

Plaintiff then changes the subject and asks the Court, instead of granting relief, to state "that it would grant the motion if the court of appeals remands for that purpose" under Federal Rule of Civil Procedure 62.1(a)(3). But that Rule affords no basis for district courts to offer freewheeling opinions to courts of appeals on cases before them; it rather operates to allow indicative rulings where some *other*, *independent* basis for "a timely motion…for relief" has been shown. Fed. R. Civ. P. 62.1(a). Only if Plaintiff is entitled to relief under some other rule is an indicative ruling proper.

Plaintiff cites only on independent basis "for relief," Rule 60(b)(2), but that reliance is misplaced. Rule 60(b)(2) affords the Court an opportunity to "relieve a party or its legal representative from a final, judgment, order, or proceeding" based on "newly discovered evidence…." Fed. R. Civ. P. 60(b)(2). But Plaintiff has no need of "relief" from anything because he *won* an injunction and is in no way burdened by any adverse action from this Court. And it is doubtful that the injunction in place is "final" under Rule 60(b) when there has been no final judgment, and the case is in the Eleventh Circuit on review of the Court's "interlocutory" permanent injunction. 28 U.S.C. 1292(a).

Thus, Plaintiff is not entitled to relief under Rule 60(b)(2), and, by consequence, is not entitled to an indicative ruling under Rule 62.1(a). His request is simply for an opinion from this Court advising the Eleventh Circuit on how to do its job. That is improper.

Plaintiff's motion should be denied.

Submitted by:

s/ Katherine L. McKnight
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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2018 the foregoing was filed and served pursuant to the Court's electronic filing procedures using the Court's CM/ECF system.

s/ Katherine L. McKnight
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