

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

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

**PLAINTIFF’S RESPONSE TO COURT ORDER**

In an order entered on February 14, 2020, this Court ordered the parties to provide their position on whether the Court has the ability to modify the remedial plan in order to correct a newly discovered error. (ECF 288.) It is the plaintiff’s position that the Court can, and should, correct the error as soon as possible.

The relevant facts are as follows. On January 29, this Court entered a remedial order (ECF 278), and the clerk entered a final judgment (ECF 279). Two days later, the defendant filed a notice of appeal. (ECF 280.) A few hours later, the clerk entered an amended judgment. (ECF 281.) On February 5, the defendant filed an amended notice of appeal incorporating the amended judgment. (ECF 284.) On February 11—eleven days after entry of the amended judgment—the plaintiff filed a motion for reconsideration seeking certain alterations to the Court’s remedial order. (ECF 287.) Three days later, on February 14, this Court entered an order setting a time for the defendant to respond to the plaintiff’s motion for reconsideration and informing the parties of a newly-discovered error in the remedial order:

The Court has also become aware of an error in the map attached to the Court's remedial order wherein Districts 2 and 7 were interchanged. (Doc. 277-1 at 2-4.) The Parties shall also provide their position no later than **Tuesday, February 25, 2020** on the Court's ability to modify the attachment.

(ECF 288.)

These facts raise the question of whether the Court has jurisdiction to correct the newly-discovered error, notwithstanding the defendant's appeal. Ordinarily, a notice of appeal divests a district court of jurisdiction. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam). However, a timely motion for reconsideration under Rule 59 or 60 suspends a judgment's finality and tolls the running of the time for taking an appeal. *Burnam v. Amoco Container Co.*, 738 F.2d 1230, 1231-32 (11th Cir. 1984); *see also* Fed. R. App. P. 4(a)(4) (effect of a motion on a notice of appeal). Indeed, the Federal Rules of Appellate Procedure contemplate just this scenario, providing that a notice of appeal is suspended pending the resolution of certain types of motions:

If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

Fed. R. App. P. 4(a)(4)(B)(i); *see also id.* (advisory committee note on 1993 amendments) (“A notice filed before the filing of one of the specified motions or after the filing of a motion but before disposition of the motion is, in effect, suspended until the motion is disposed of, whereupon, the previously filed notice effectively places jurisdiction in the court of appeals.”). Appellate Rule 4(a)(4)(A) specifies several types of motions that have this effect, including those filed under Rules 59 and 60. Thus, the filing of a motion for reconsideration under Rules 59 and 60 results in the suspension of a prior-filed notice of appeal. *See Griggs*, 459 U.S. at 60; *Stansell v. Revolutionary Armed Forces of Columbia*, 771 F.3d 713, 745-46 (11th Cir. 2014).

Here, the defendant filed a notice of appeal after judgment but before the Court resolved the plaintiff's timely motion for reconsideration under Rules 59 and 60. As a result, the defendant's appeal is suspended, and this Court retains jurisdiction to correct the newly-discovered error on its own motion.

This position is consistent with Rule 60(a), which provides as follows:

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. *But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.*

Fed. R. Civ. P. 60(a) (emphasis added). Because the plaintiff here filed a motion for reconsideration which suspended the defendant's appeal, the defendant's appeal is not currently "pending" in the Eleventh Circuit.

In addition, because the plaintiff here has already filed a motion for reconsideration, the Court could correct the error in the context of that motion. Or, because the time for filing an appeal-tolling motion for relief under Rule 60(a) has not yet expired, *see* Fed R. App. P. 4(a)(4)(A)(vi), the Court may consider this response as a motion under Rule 60 to correct the newly-discovered error.

Under these circumstances, this Court has multiple avenues through which it can correct the error. It can, and should, do so promptly so that the election process for members of the school board can move forward under a nondiscriminatory plan.

Date: February 20, 2020

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing PLAINTIFF'S RESPONSE TO COURT ORDER with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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Dated this 20th day of February, 2020.

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