CARLTON FIELDS

If at First You Don't Succeed, Maybe Appeal Rather Than Try, Try Again

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On August 4, 2022, the Seventh Circuit Court of Appeals issued a short opinion that is chock-full of helpful reminders about the relationships between post-judgment and appellate practices. In *Word Seed Church v. Village of Homewood*, the panel recited that the plaintiffs sued the Village of Homewood, Illinois, for violations of the Religious Land Use and Institutionalized Persons Act and the Fourteenth Amendment's equal protection clause. The federal district court dismissed the lawsuit and the plaintiffs timely sought reconsideration under Federal Rule of Civil Procedure 59. The district court denied the Rule 59 motion. Rather than filing an appeal at that point, however, the plaintiffs apparently decided to, as they say, "try, try again." They filed a second motion for reconsideration, this one more than 28 days after the judgment. Consequently, the district court treated the second motion as a motion under Rule 60(b). The district court denied the Rule 60(b) motion, observing that parties may not advance arguments in motions to reconsider that could have been presented before the court entered judgment. At this point, the plaintiffs filed a notice of appeal. On appeal, the Seventh Circuit refused to consider arguments raised by the plaintiffs directed to the original judgment or the denial of their Rule 59 motion. "To preserve arguments on appeal related to the original judgment, [the plaintiffs] needed to file a notice of appeal within 30 days after judgment or the denial of their Rule 59(e) motion." "Our jurisdiction is limited to whether the district court abused its discretion in denying [the plaintiffs'] Rule 60(b) motion." The panel then concluded that the district court did not abuse its discretion in denying the plaintiffs' Rule 60(b) motion. In doing so, it embraced the principle as "well-settled that a motion to reconsider is not the proper vehicle to raise new arguments that could and should have been raised prior to judgment." The plaintiffs attempted to avoid that well-settled principle by arguing that their new Rule 60(b) argument was prompted by a recent decision in their favor by another federal district judge in the same judicial district. The panel rejected that argument:

> [The plaintiffs] attempt[] to overcome this well-settled principle by arguing that their successful litigation in a parallel suit constitutes "a significant change in the law." But a

> decision by another district judge is not controlling precedent, and therefore cannot constitute a significant change in the law. Disagreement among judges within the same district is neither uncommon nor extraordinary. ... The proper method for resolving different judges' answers about controlling legal rules and principles is through timely appeals.

For these reasons, the panel affirmed the order on appeal. **Tips:**

- Authorized and timely filed motions to reconsider a judgment in federal court may toll the time to file a notice of appeal, but successive motions to reconsider usually will not.
- As this decision demonstrates, practitioners in federal courts should be wary of raising arguments in motions to reconsider judgments that could have been raised before the judgment was entered. There are occasions, of course, where courts will consider arguments raised for the first time in a motion for reconsideration despite the general rule, and therefore practitioners should not automatically abandon such arguments. The well-settled principle discussed in this case, however, cautions strongly in favor of making all available arguments before the court rules.
- Federal district court judges are not bound by the decisions of other district court judges, even if from within the same federal district.

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