

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted May 4, 2023*

Decided May 12, 2023

BeforeILANA DIAMOND ROVNER, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 22-1551

TERRY W. HUSPON,
*Plaintiff-Appellant,**v.*MICHAEL MITCHEFF, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Southern District of
Indiana, Terre Haute Division.

No. 2:21-cv-00183-JRS-MG

James R. Sweeney II,
*Judge.***ORDER**

Terry Huspon, incarcerated in an Indiana prison, challenges the denial of his postjudgment motions. Because he fails to show extraordinary circumstances that would merit Rule 60 relief, we affirm.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

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Huspon sued prison medical providers, *see* 42 U.S.C. § 1983, for deliberate indifference toward his leg infection, which, he alleged, caused him to become wheelchair-bound. The defendants moved for summary judgment on grounds that Huspon failed to exhaust his administrative remedies. *See id.* § 1997e(a). The district court later entered judgment for the defendants—reasoning that Huspon had failed to follow the three-step grievance process available to Indiana Department of Corrections prisoners before he filed suit.

Several months later, after the time to appeal the judgment had lapsed, Huspon filed two successive motions under Rule 60(b) of the Federal Rules of Civil Procedure. He argued that exhaustion was not required because the prison had refused to give him the grievance forms; in support, he attached grievances that he filed after judgment had been entered in this case. The district court denied the motions, ruling that Huspon failed to show why the summary judgment ruling was incorrect.

Huspon then appealed, but his notice of appeal was not timely as to the district court's entry of judgment, *see* FED. R. APP. P. 4(a)(1)(A), so we limited his appeal to only the order denying his postjudgment motions. The practical effect is that Huspon faces an uphill battle: Relief is available under Rule 60(b) only when the moving party shows "special circumstances" that justify this extraordinary remedy, such as excusable neglect or newly discovered evidence. *Jones v. Ramos*, 12 F.4th 745, 749 (7th Cir. 2021); *see* FED. R. CIV. P. 60(b).

Huspon now contends that he found himself in such a situation after the case closed, when he was away from the prison without access to his legal materials. (He supplies no further details.) But Huspon did not raise this contention in either of his postjudgment motions, and therefore has forfeited or waived this argument. *See Cooper v. Retrieval-Masters Creditors Bureau, Inc.*, 42 F.4th 675, 688 (7th Cir. 2022). In any event, this argument is not supported by the record. Huspon says he was away from prison in early 2022, but the timing of this absence postdated the 30-day period in which Huspon was required to appeal the court's entry of judgment in late 2021.

Huspon devotes much of his brief to challenging the court's exhaustion ruling and arguing that the defendants were deliberately indifferent to his medical needs. But an appeal from the denial of a Rule 60(b) motion does not allow us to consider the propriety of the original judgment. *Bell v. McAdory*, 820 F.3d 880, 883 (7th Cir. 2016).

AFFIRMED