

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 29, 2024

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA ex rel.
VINCENT L. HEPBURN,

Plaintiff - Appellant,

v.

NASA ADMINISTRATOR CLARENCE
WILLIAM NELSON, II; FORMER NASA
ADMINISTRATOR JAMES F.
BRIDENSTINE; ELON MUSK; SPACE
EXPLORATION TECHNOLOGIES
CORPORATION; JEFF BEZOS; BLUE
ORIGIN LLC; ABL SPACE SYSTEMS
CO; ADNET SYSTEMS INC; AEGIS
AEROSPACE LLC; AERIE AEROSPACE
LLC; AERODYNE SGT ENGINEERING
SERVICES LLC; AEROJET
ROCKETDYNE INC; AGILE DECISION
SCIENCES LLC; AHMIC AEROSPACE;
ANALYTICAL MECHANICS
ASSOCIATES INC; ANSYS INC; ARES
TECHNICAL SERVICES
CORPORATION; ASSOCIATION OF
UNIVERSITIES FOR RESEARCH IN
ASTRONOMY INC; ASSURANCE
TECHNOLOGY CORPORATION;
ASTRA SPACE INC; ASTROBOTIC
TECHNOLOGY INC; ASTROTECH
SPACE OPERATIONS LLC; AXIOM
SPACE INC; BALL AEROSPACE &
TECHNOLOGIES CORP; BARRIOS
TECHNOLOGY LTD; BASTION
TECHNOLOGIES INC; BECHTEL
NATIONAL INC; BOOZ ALLEN
HAMILTON INC; BOX ELDER
INNOVATIONS LLC; CALIFORNIA
INSTITUTE OF TECHNOLOGY;

No. 24-6188
(D.C. No. 5:23-CV-00586-J)
(W.D. Okla.)

CHARLES STARK DRAPER
LABORATORY INC; COLLINS
AEROSPACE; COLSA CORPORATION;
COMMONWEALTH SCIENTIFIC AND
INDUSTRIAL RESEARCH
ORGANIZATION; CONSOLIDATED
SAFETY SERVICES INC;
CORNERSTONE RESEARCH GROUP
INCORPORATED; CRAIG TECHNICAL
CONSULTING INC; DYNETICS INC;
ELEMENTUM 3D INC; FIREFLY
AEROSPACE INC; GENERAL
ATOMICS ELECTROMAGNETIC
SYSTEMS INC; GENERAL DYNAMICS
CORPORATION; GLOYER TAYLOR
LABORATORIES INC; HONEYBEE
ROBOTICS LLC; HONEYWELL
INTERNATIONAL INC; IN SPACE LLC;
ISPACE INC; JACOBS SOLUTIONS
INC; KBR INC; KBR WYLE SERVICES
LLC; KBRWYLE TECHNOLOGY
SOLUTIONS LLC; L3HARRIS
TECHNOLOGIES INC; LEIDOS INC;
LEONARDO S.P.A; LJT &
ASSOCIATES INC; LOCKHEED
MARTIN CORPORATION; LUNAR
OUTPOST INC; MASSACHUSETTS
INSTITUTE OF TECHNOLOGY;
MASTEN SPACE SYSTEMS INC;
MATHEMATICAL RESEARCH
INCORPORATED; MAXAR SPACE
LLC; MICROCHIP TECHNOLOGY
INCORPORATED; MILLENNIUM
SPACE SYSTEMS INC; MITCHELL
VANTAGE SYSTEMS LLC; NATIONAL
ACADEMY OF SCIENCES; NORTHROP
GRUMMAN CORPORATION;
OCEANEERING INTERNATIONAL
INC; OPR LLC; PAE SGT PARTNERS
LLC; PERATON INC; PH MATTER
LLC; PHANTOM SPACE
CORPORATION; RAYTHEON
TECHNOLOGIES CORPORATION;

REDWIRE CORPORATION;
RELATIVITY SPACE INC; ROCKET
LAB USA INC; ROTHE
DEVELOPMENT INC; RUSSIA SPACE
AGENCY, State Space Corporation
Roscosmos; SP KOROLEV ROCKET
AND SPACE PUBLIC CORPORATION
ENERGIA; SCIENCE APPLICATIONS
INTERNATIONAL CORPORATION;
SCIENCE SYSTEMS AND
APPLICATIONS INC; SELECT
FEDERAL SERVICES LLC; SENSURON
LLC; SETI INSTITUTE; SIERRA LOBO
INC; SIERRA NEVADA
CORPORATION; SOUTHWEST
RESEARCH INSTITUTE;
SPACEFACTORY INC; SPACEFLIGHT
INC; STELLAR EXPLORATION INC;
STINGER GHAFARIAN
TECHNOLOGIES INC; SYNCOM
SPACE SERVICES LLC; TECHSHOT
INC; TEE MASTERS INC; TELEDYNE
BROWN ENGINEERING INC; THALES
SA; THE AEROSPACE CORPORATION;
THE BOEING COMPANY; TRIDENT
VANTAGE SYSTEMS LLC; TYVAK
NANO SATELLITE SYSTEMS INC;
UNITED LAUNCH SERVICES LLC;
UNIVERSITIES SPACE RESEARCH
ASSOCIATION; VIRGIN GALACTIC
LLC; VIRGIN ORBIT LLC; ZIN
TECHNOLOGIES,

Defendants - Appellees.

ORDER AND JUDGMENT*

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before **PHILLIPS, MURPHY, and CARSON**, Circuit Judges.

After examining Vincent Hepburn’s brief and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Hepburn appeals pro se from an order of the district court denying his Fed R. Civ. P. 60(b) motion for relief from judgment. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, this court **affirms** the district court’s order.¹

This court reviews for abuse of discretion the denial of a Rule 60(b) Motion for relief from judgment. *Lebahn v. Owens*, 813 F.3d 1300, 1306 (10th Cir. 2016). “Rule 60(b) relief is extraordinary and may only be granted in exceptional circumstances.” *Id.* “We will not reverse the district court’s decision on a Rule 60(b) motion unless that decision is arbitrary, capricious, whimsical, or manifestly

¹ To the extent Hepburn’s appellate brief can be read as challenging the merits of the district court’s July 17, 2023, order dismissing Hepburn’s False Claims Act complaint, this court lacks appellate jurisdiction. At most, assuming NASA Administrator Bill Nelson was sued in his official capacity, Hepburn had sixty days to file a notice of appeal from the underlying dismissal of his complaint. Fed. R. App. P. 4(a)(1)(B); *see Bowles v. Russell*, 551 U.S. 205, 214 (2007) (“[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement.”). Hepburn did not file a notice of appeal. Instead, nearly a year after the district court entered its judgment, Hepburn filed the instant Rule 60(b) motion for relief from judgment. A review of the district court’s docket reveals Hepburn did not file any motion that could toll Rule 4(a)(1)(B)’s sixty-day requirement between the entry of judgment and the filing of the instant Rule 60(b) motion. *See* Fed. R. App. P. 4(a)(4)(A). Accordingly, this court’s appellate jurisdiction is limited to the order of the district court denying Hepburn’s Rule 60(b) motion.

unreasonable.” *Id.* (quotation omitted). This standard is exacting. *See Johnson v. Spencer*, 950 F.3d 680, 700-01 (10th Cir. 2020) (holding this court will set aside the district court’s denial of relief under Rule 60(b)(6) “only if we find a complete absence of a reasonable basis and are certain that the decision is wrong”).

The arguments set out in Hepburn’s Rule 60(b) motion are “factually frivolous” and “clearly baseless.” *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992); *see also Hepburn v. United States*, No. 24-6045, 2024 WL 3287252, at *1-2 (10th Cir. July 3, 2024) (unpublished disposition cited solely for background purposes) (describing the factually and legally frivolous basis for Hepburn’s Federal Tort Claims Act complaint, which factual and legal basis is identical to the basis advanced in this case). That being the case, the district court acted well within its discretion in denying Hepburn’s Rule 60(b) motion. *See Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 307-08 (1989) (holding that district courts have inherent power to dispose of frivolous or malicious actions).

For those reasons set out above, the order of the United States District Court for the Western District of Oklahoma dismissing Hepburn’s Rule 60(b) motion is hereby **AFFIRMED**.

Entered for the Court

Michael R. Murphy
Circuit Judge