

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**June 20, 2023**

**Christopher M. Wolpert**  
**Clerk of Court**

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JAMES JORDANOFF, IV,

Plaintiff - Appellant,

v.

AMANDA HAEZE TROXEL,  
individually and in official capacity as an  
officer at Lexington Assessment and  
Reception Center; FNU WEAVER, in  
official capacity as Captain at Joseph Harp  
Correctional Center; FNU KEMBREL,  
Case Worker,

Defendants - Appellees.

No. 22-6178  
(D.C. No. 5:20-CV-00403-R)  
(W.D. Okla.)

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**ORDER AND JUDGMENT\***

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Before **MATHESON, BACHARACH, and ROSSMAN**, Circuit Judges.

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James Jordanoff, IV, proceeding pro se, sued various prison officials under 42 U.S.C. § 1983 for alleged violations of his civil rights. The district court dismissed his complaint for failure to effect service on the defendants and failure to

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\* After examining the briefs 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. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

exhaust administrative remedies. Mr. Jordanoff then filed what the district court construed as a motion to reconsider under Fed. R. Civ. P. 59(e). When the court denied that motion, he filed consecutive Rule 60(b) motions, which the court also denied. Mr. Jordanoff appeals only the denial of his last Rule 60(b) motion. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.<sup>1</sup>

## I. BACKGROUND

In his complaint Mr. Jordanoff alleged that prison official Amanda Haeze Troxel used excessive force against him resulting in injuries. He also alleged that two other prison employees, whom he identified as FNU Weaver and FNU Kembrel,<sup>2</sup> retaliated against him for reporting the alleged use of excessive force.

On Ms. Troxel's motion, the district court dismissed Mr. Jordanoff's complaint because he had failed to effect timely service under Fed. R. Civ. P. 4, and because he otherwise failed to exhaust his administrative remedies under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). The court also entered a final judgment.

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<sup>1</sup> Because Mr. Jordanoff appears pro se, “we liberally construe his filings, but we will not act as his advocate.” *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

<sup>2</sup> Mr. Jordanoff never served Defendants Weaver and Kembrel. They therefore were never made parties to the action. *See Bristol v. Fibreboard Corp.*, 789 F.2d 846, 847 (10th Cir. 1986) (holding that because certain defendants were never served, they “were never made parties to [the] lawsuit,” and it was therefore “not necessary for the district court to enter an order dismissing them prior to its entry of the order and judgment”).

Mr. Jordanoff filed a Fed. R. Civ. P. 59(e) motion to reconsider, contending that prison officials interfered with his ability to properly serve Ms. Troxel and to use the prison grievance process. The district court denied the motion.

Mr. Jordanoff then filed a second motion to reconsider. He argued the exhaustion requirement did not apply to him because he was in a mental health unit of the prison and his mental illness impeded his ability to exhaust his claims. He also rehashed arguments the district court had already rejected. The court, construing the motion as one for relief from judgment under Fed. R. Civ. P. 60(b), again denied his motion.

Finally, Mr. Jordanoff filed a third motion to reconsider under Rule 60(b), which is the subject of this appeal. That motion sought “refuge under the courts [sic] power and protection from certain state actors . . . seeking to harm plaintiff.” R. at 845. He asked for injunctive relief to prevent prison staff—in particular, a prison doctor who was not a party to his lawsuit—from administering certain anti-psychotic medications. He also asked the district court to order the Oklahoma Department of Corrections to designate a new law librarian for him. The court denied the motion, stating that his allegations and requested relief were “outside the scope of this litigation.” R. at 923.

Mr. Jordanoff filed a notice of appeal from the order denying his third motion to reconsider. *See* R. at 936-37.

## II. DISCUSSION

We review an appeal from the denial of a Rule 60(b) motion for an abuse of discretion. *See Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991). Such an appeal “raises for review only the district court’s order of denial and not the underlying judgment itself.” *Id.*

Mr. Jordanoff’s opening brief does not specifically challenge the district court’s denial of his third motion to reconsider. Instead, he focuses on the court’s earlier order dismissing his complaint for failure to effect proper service and failure to exhaust administrative remedies. In his 62-page handwritten brief, Mr. Jordanoff attempts to explain the various reasons that the prison’s administrative remedies were unavailable to him. *See Ross v. Blake*, 578 U.S. 632, 642 (2016) (“An inmate . . . must exhaust available remedies, but need not exhaust unavailable ones.”). Relatedly, his brief describes the prison’s alleged efforts to impede his ability to serve the defendants. Because Mr. Jordanoff’s appeal is limited to the denial of his third motion to reconsider and not the underlying judgment, we will not consider these arguments.<sup>3</sup> He has not filed a reply brief.

We have reviewed the district court’s order denying Mr. Jordanoff’s third motion to reconsider, and we agree that Mr. Jordanoff failed to demonstrate any basis

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<sup>3</sup> For the same reasons, we deny Mr. Jordanoff’s motion for leave to amend his opening brief, which focuses entirely on his efforts to serve Ms. Troxel.

for Rule 60(b) relief. *See Van Skiver*, 952 F.2d at 1243. We therefore discern no abuse of discretion.

### III. CONCLUSION

We affirm the district court's denial of Mr. Jordanoff's third motion to reconsider. We grant Mr. Jordanoff's motion for leave to proceed in forma pauperis, but we remind him that this status eliminates only the need for prepayment of the filing fee. *See Rachel v. Troutt*, 820 F.3d 390, 399 (10th Cir. 2016). He remains obligated to pay the full filing fee in monthly installments.

Entered for the Court

Scott M. Matheson, Jr.  
Circuit Judge