

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

14-P-1781

KEVIN R. MCGEE

vs.

TOWN OF ROCKLAND & others.<sup>1</sup>

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Plaintiff Kevin R. McGee appeals from the denial of his motion to vacate a summary judgment dismissing his claims in Superior Court.<sup>2</sup> On appeal, he asserts that the judge improperly denied his motion to vacate pursuant to Mass.R.Civ.P. 60(b), 365 Mass. 828 (1974).<sup>3</sup>

The plaintiff's complaint was premised on the town of Rockland's (town's) purported refusal to renew the plaintiff's license to sell used cars. The defendants moved for summary

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<sup>1</sup> Allan Chiocca, John Llewellyn, and Mary Stewart.

<sup>2</sup> The plaintiff also attempted to appeal from the order denying his motion for reconsideration of the denial of his motion to vacate; the notice of appeal was untimely and any appeal of that order is therefore not properly before us. See Mass.R.A.P. 4(a), as amended, 464 Mass. 1601 (2013).

<sup>3</sup> Because the plaintiff did not appeal from the judgment, he is not granted the benefit of de novo review. See Pina v. McGill Dev. Corp., 388 Mass. 159, 166 (1983), quoting from Murphy v. Administrator of the Div. of Personnel Admn., 377 Mass. 217, 227 (1979) ("[D]enial of a motion under Rule 60(b) will be set aside only on a clear showing of an abuse of discretion").

judgment, arguing that the plaintiff did not exhaust his administrative remedies as required by G. L. c. 140, § 59. The motion judge agreed, and dismissed the plaintiff's claims. The plaintiff moved to vacate the judgment on account of the town's refusal to comply with discovery orders and behavior allegedly equivalent to fraud on the court; the motion was denied by a different judge. We treat the plaintiff's motion as one under Mass.R.Civ.P. 60(b)(3), where "[r]elief may be granted . . . if there has been fraud, misrepresentation, or other misconduct of an adverse party." Owens v. Mukendi, 448 Mass. 66, 73 (2006).

The plaintiff's motion combines allegations that the town refused to provide documents in discovery, failed to serve the plaintiff with copies of filed motions,<sup>4</sup> and lied during court proceedings.<sup>5</sup> His minimal citations to the record provide scant

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<sup>4</sup> Specifically, the plaintiff in his brief argues that the town failed to file the motion for summary judgment within the proper deadline, did not provide him or his counsel with a copy of the motion for summary judgment, and did not inform him of the summary judgment hearing. We note that the plaintiff's arguments are, almost without exception, contradicted by the record. For example the plaintiff claims that the motion for summary judgment was filed two days before trial; the docket shows that the motion for summary judgment was filed on May 8, 2012, and trial at that time was scheduled for July 16, 2012. The plaintiff then states that the motion judge denied the motion for summary judgment on July 12, 2012, while in fact the motion was stayed by the consent of both parties.

<sup>5</sup> We decline to consider any of the plaintiff's arguments that implicate the issues resolved in summary judgment. See note 3, supra.

support for his claims.<sup>6</sup> See Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975). Notwithstanding his baseless allegations, none of the behavior the plaintiff alleges arises to the level of fraud on the court. "[F]raud on the court cannot 'embrace [just] any conduct of an adverse party of which the court disapproves.'" Winthrop Corp. v. Lowenthal, 29 Mass. App. Ct. 180, 184 (1990), quoting from Kupferman v. Consolidated Research & Mfg. Corp., 459 F.2d 1072, 1078 (2d Cir. 1972). The behavior must be "egregious conduct involving a corruption of the judicial process itself. Examples are bribery of judges, employment of counsel to 'influence' the court, bribery of the jury, and the involvement of an attorney (an officer of the court) in the perpetration of fraud." Wojcicki v. Caragher, 447 Mass. 200, 210 (2006), quoting from MacDonald v. MacDonald, 407 Mass. 196, 202 (1990).

A motion under rule 60(b) is addressed to the judge's discretion; we discern no abuse of discretion from the record. Finally we note that that the majority of the plaintiff's brief, explaining how his divorce affected the town's treatment of him in the license renewal process, does not conform to the level of

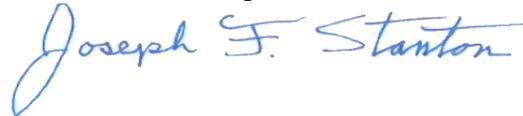
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<sup>6</sup> To support his argument, the plaintiff presented an affidavit from his counsel, Robert Harland, stating that his counsel had contacted the town's counsel, John Clifford, but never heard back from him. In an affidavit, Clifford maintained that he called Harland on two occasions but Harland never contacted him, and provided telephone records in support.

reasoned appellate argument required by Mass.R.A.P. 16(a)(4). The plaintiff has "failed to support his claims of error with sufficient legal argument or factual detail, and fails to cite to sufficient supporting authority." Kellogg v. Board of Registration in Med., 461 Mass. 1001, 1003 (2011).

Order denying motion to vacate judgment affirmed.

By the Court (Grainger, Hanlon & Agnes, JJ.<sup>7</sup>),



Clerk

Entered: January 7, 2016.

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<sup>7</sup> The panelists are listed in order of seniority.