

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

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DEPUTY

J. WINSTON KRAUSE and SHERI S. KRAUSE,
Plaintiffs,

-vs-

Case No. A-08-CA-865-SS

UNITED STATES OF AMERICA,
Defendant.

ORDER

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Plaintiffs J. Winston and Sheri S. Krause (collectively the "Krauses")'s Motion for Relief from Final Judgment [#34], Defendant the United States ("U.S.")'s Response [#35], and the Krauses' Reply [#36]. Having considered the motions, the relevant law, and the case file as a whole, the Court DENIES the Motion.

Under Federal Rule of Civil Procedure 60(b)(1), a court may grant relief from a final judgment or order on grounds of "mistake, inadvertence, surprise, or excusable neglect." *Benson v. St. Joseph Reg'l Health Ctr.*, 575 F.3d 542, 547 (5th Cir. 2009). Such a motion is appropriate to rectify obvious errors of law, apparent on the record. *Id.* However a Rule 60(b) motion may not be used to provide an avenue for challenges of mistakes of law which should ordinarily be raised by timely appeal. *Pryor v. U.S. Postal Serv.*, 769 F.2d 281, 286 (5th Cir. 1985).

The Krauses' motion argues on the basis of mistake. However, their motion is merely a restatement of the same arguments the Court has twice indicated were not persuasive. It presents no "showing of unusual or unique circumstances justifying such relief [under Rule 60]." *James v.*

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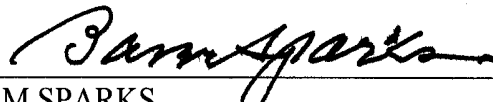
Rice Univ., No. 03-20046, 2003 WL 22669144 (5th Cir. 2003) (citing *Pryor*, 769 F.2d at 286). Instead, the Krauses urge the same arguments they made at the summary judgment stage and in their motion for reconsideration.

The Court tried to explain its opinion in a well-reasoned, scholarly way the first two times. The Court will make no such effort to respond to the Krauses reiteration of the identical arguments this time. The Krauses attempted to shelter millions in income from tax. They were caught, and fined. After paying the fines, they sought a refund on the grounds the fines were wrongly imposed. This Court ruled (1) the fines were properly imposed, and (2) the Krauses were barred from obtaining a refund by the Tax Equity and Fiscal Responsibility Act of 1982.

The Krauses are entitled to disagree with this Court's interpretation of the law, however they do not point to any clear error in the record. Instead, they disagree with how the Court has interpreted the law and simply argue their own interpretation, which the Court has already evaluated twice and rejected, should have prevailed. Such a motion does not meet the standard for relief from judgment under Rule 60(b). Therefore,

IT IS ORDERED that Plaintiffs J. Winston and Sheri S. Krause's Motion for Relief from Judgment [#34] is DENIED.

SIGNED this the 29th day of March 2010.



SAM SPARKS
UNITED STATES DISTRICT JUDGE