IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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JAY J. SCHINDLER,

Plaintiff,

v.

MARSHFIELD CLINIC,

Defendant.

ORDER

05-C-705-C

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In this civil action for monetary relief, plaintiff Jay Schindler contends that defendant Marshfield Clinic breached the terms of his employment contract by terminating him without cause. Although plaintiff asserted additional tort claims against defendant at an earlier stage in this lawsuit, I granted summary judgment on each of these claims in an order entered January 4, 2007. Trial is scheduled for May 7, 2007.

Now before the court is plaintiff's "Motion for Relief and Reconsideration of the Dismissal of His Defamation and Emotional Distress Claims." Curiously, both sides have briefed the motion as though it were a motion for relief from final judgment pursuant to Fed. R. Civ. P. 60(b); however, because judgment has not been entered in this case, I construe the motion as a request for reconsideration of this court's January 4, 2007 summary judgment order, dkt. #243. Plaintiff has provided no legitimate excuse for having failed to obtain the

evidence he needed in time to respond properly to defendant's motion for summary judgment and his remaining arguments in favor of reconsideration are merely reargument of questions decided on summary judgment. Therefore, the motion will be denied.

District courts have inherent power to reconsider orders issued before the entry of final judgment. Wilson ex rel. Adams v. Cahokia School Dist., — F. Supp. 2d —, 2007 WL 172227, *13 (S.D. Ill. Jan. 19, 2007) (citing cases). "A motion to reconsider is appropriate where: the court has misunderstood a party; the court has made a decision outside the adversarial issues presented to the court by the parties; the court has made an error of apprehension (not of reasoning); a significant change in the law has occurred; or significant new facts have been discovered." Id. at *14. Because "[t]he Court's prior rulings . . . are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure," Berger v. Xerox Retirement Income Guaranty Plan, 231 F. Supp. 2d 804, 820 (S.D. Ill. 2002), motions for reconsideration are not intended to permit parties to introduce evidence and legal arguments that could have been presented to the court at an earlier time, but were not. Frietsch v. Refco, Inc., 56 F.3d 825, 828 (7th Cir. 1995) ("It is not the purpose of allowing motions for reconsideration to enable a party to complete presenting his case after the court has ruled against him. Were such a procedure to be countenanced, some lawsuits really might never end, rather than just seeming endless.").

In his motion for reconsideration, plaintiff makes two main arguments. First, he contends that the court was wrong to conclude that defendant's 2004 report to the National

Practitioner Data Bank was an accurate account of the reasons for plaintiff's termination. Second, plaintiff asserts that he has discovered new evidence that justifies reexamination of his defamation claims.

In support of his first argument, plaintiff takes issue with the court's finding that the 2004 National Practitioner Data Bank report accurately represented the grounds on which the Marshfield Clinic's peer review committee recommended that plaintiff be terminated from his employment with the clinic. Most of the arguments plaintiff makes mere repetition of those I addressed on summary judgment. Having considered them for a second time, I am not convinced that I erred in dismissing his defamation claim. The remainder of plaintiff's arguments are new theories not briefed on summary judgment that I will not address for the first time now.

That leaves plaintiff's contention that "newly discovered evidence" justifies reinstating his defamation claim. According to plaintiff, on December 27, 2006 (more than two months after defendant filed its motion for summary judgment on plaintiff's defamation claims), defendant provided him with documents purportedly showing that the Marshfield Clinic lacked the authority to review or revoke plaintiff's surgical privileges. What plaintiff neglects to reveal is that although the documents were produced in response to a request for production made in June 2006, the parties had stipulated that they would stay discovery until the court decided defendant's motion for immunity under the Health Care Quality Improvement Act. After the court issued its decision on October 13, 2006, plaintiff did not

renew his requests for document production. Moreover, plaintiff did not move to compel defendant to produce the documents until one month *after* the parties finished briefing defendant's motion for summary judgment on the merits of plaintiff's defamation claim.

In the February 22, 2006 preliminary pretrial conference order , dkt. #8, the parties were advised "to undertake discovery in a manner that allows them to make or respond to dispositive motions within the scheduled [dispositive motion] deadlines. The fact that the general discovery cutoff . . . occurs after the deadlines for filing and briefing dispositive motions is not a ground for requesting an extension of the motion and briefing deadlines." Although plaintiff did not ask the court to stay a decision on summary judgment because he had not obtained needed discovery in a timely fashion, what he did was worse: He waited until after the summary judgment motion was decided to complete his discovery and move for reconsideration in reliance on evidence he failed to obtain before summary judgment. Such a tact is doomed to fail. Frietsch, 56 F.3d at 828 (denying motion for reconsideration based on arguments that could have been made earlier).

Plaintiff was on notice that he needed to gather his evidence before summary judgment. He did not do so. Because plaintiff's "newly discovered" evidence is untimely, I need not consider whether it would have made a difference in the dismissal of his defamation claim. The motion for reconsideration will be denied.

ORDER

IT IS ORDERED that plaintiff's motion for reconsideration of the court's dismissal of his defamation and emotional distress claims is DENIED.

Entered this 12th day of March, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge