IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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RICHARD JOHN BAUER,

Plaintiff,

v.

JULEANN HORNYAK,
JANE DOE (Unknown), and
ROBERT THOMAS,

Defendants.

ORDER

07-C-055-C

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Plaintiff Richard John Bauer paid the $350 fee for filing his complaint in this case. Shortly thereafter, however, he advised the court that he needed assistance to serve the defendants. In an order dated March 12, 2007, I told plaintiff that I could not ask the United States Marshal to serve his complaint unless he were first found to be eligible to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. I cautioned plaintiff that if he were to seek pauper status, his eligibility would not only hinge on a showing that he lacked the financial resources to serve his complaint, but on a finding by the court following screening that his complaint states a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2). Plaintiff proceeded to request pauper status and, in screening his complaint,

this court concluded that it failed to state a claim of constitutional wrongdoing against any of the defendants. Judgment of dismissal was entered on April 30, 2007.

Now plaintiff has filed a document titled "Motion to Reconsider," which I construe as a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59. The purpose of a Rule 59 motion is to bring to the court's attention newly discovered evidence or a manifest error or law or fact. E.g., Bordelon v. Chicago School Reform Bd. of Trustees, 233 F.3d 524, 529 (7th Cir. 2000). It is not intended as an opportunity to reargue the merits of a case. Neal v. Newspaper Holdings, Inc. 349 F.3d 363, 368 (7th Cir. 2003). Nor is a Rule 59 motion intended as an opportunity for a party to start giving evidence that could have been presented earlier. Dal Pozzo v. Basic Machinery Co., Inc., slip op 04-4277 (7th Cir. decided Sept. 6, 2006), citing Frietsch v. Refco, Inc., 56 F.3d 825, 828 (7th Cir. 1995).

Motions under Rule 59 must be filed within ten days of the entry of judgment. Fed. R. Civ. P. 59(b). A litigant's failure to meet the time limits of Rule 59 forecloses him from raising in the district court his assertions that errors of law have been made. United States v. Griffin, 782 F.2d l393 (7th Cir. l986). If the motion is timely, the movant must "clearly establish" his or her grounds for relief. Romo v. Gulf Stream Coach, Inc., 250 F.3d 1119, 1122 n.3 (7th Cir. 2001). A timely motion filed pursuant to Fed. R. Civ. P. 59 tolls the time for taking an appeal.

Plaintiff's motion, which was filed on May 15, 2007, is not timely. In calculating the

ten-day period between April 30, 2007, the date of entry of the judgment, and the deadline for filing a Rule 59 motion, the date of entry of the judgment and intermediate Saturdays, Sundays and legal holidays are excluded. Fed. R. Civ. P. 6(a). Therefore, plaintiff's deadline was May 14, 2007. His motion was not filed until May 15, one day late. Therefore, his arguments in favor of altering the judgment are foreclosed.

Even if plaintiff's motion had been timely, however, I could not have granted it. In his complaint, plaintiff contended that his constitutional rights were violated when the defendant judge failed to respond to a letter plaintiff sent to him and when the clerk of the Supreme Court for the State of Illinois and a judge's secretary "obstructed justice" by passing the letter along to security. In his Rule 59 motion, plaintiff argues that in the screening order, I misstated a fact he had alleged in his complaint. In particular, plaintiff says that I wrote that the letter he mailed to the defendant judge was mailed to the court. The correct fact is that he mailed his letter to the defendant judge's "Wheaton office" and that he intended the letter to be "personal."

Whether the letter at issue in plaintiff's complaint was mailed to the defendant judge's court or his "Wheaton office" and whether plaintiff intended the letter to be for the judge's eyes only makes no difference. The analysis remains the same. I have already explained,

> . . . while plaintiff may have a First Amendment right to freely speak his mind

> on matters of public concern, he does not allege facts from which an inference may be drawn that he was prevented from doing so. Rather, his complaint is that the defendant judge did not respond to his letter and that the defendant secretary turned it over to security. Plaintiff's free expression rights do not extend so far as to impose on others an obligation to give him a particular response or any response at all to his written communications, and they do not work to prohibit others from forwarding his communications to security if such action is deemed appropriate.

If plaintiff is now arguing that his letter did not concern matters of public interest but rather, was "personal" in nature, then the communication does not fall within the First Amendment's protection at all. The rule that an individual's statements are not protected unless they relate to matters of "public concern" is well-settled. Connick v. Myers, 461 U.S. 138 (1983); Pickering v. Board of Ed. of Township High School Dist. 205, Will Cty., 391 U.S. 563 (1968).

ORDER

IT IS ORDERED that plaintiff's motion pursuant to Fed. R. Civ. P. 59 to alter or amend the judgment entered in this action on April 30, 2007, is DENIED.

Entered this 24th day of May, 2007.

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