

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHAD GOETSCH,

Plaintiff,

v.

DR. LAETITIA LEY,
DR. MIKE VANDENBROOK and
DR. SCOTT RUBIN-ASCH,

Defendants.

ORDER

09-cv-228-bbc

In an order entered in this case on December 30, 2010, I granted summary judgment to defendants on plaintiff Chad Goetsch's claims that they violated his rights under the Eighth Amendment by failing to give him adequate treatment for his mental health problems. On January 10, 2011, plaintiff moved for reconsideration of the summary judgment order, and I denied that motion in an order entered February 18, 2010. Dkt. #117. Within one week, plaintiff filed a "Second Motion for Reconsideration Due to Court's Apparent Memory Loss Regarding the '2nd Amended Complaint.'" That motion will be denied. Under Fed. R. Civ. P. 59, any motion to alter or amend the judgment must be filed within 28 days of the entry of judgment. Plaintiff's second motion for

reconsideration is much too late to be considered under Rule 59. Nor could it be considered under Rule 60, which is not designed to address the sort of run-of-the mill legal or factual challenge such as the one plaintiff is asserting. Harrington v. City of Chicago, 433 F.3d 542, 546 (7th Cir. 2006) (Rule 59(e) motion is permissible when there has been manifest error of law or fact; Rule 60(b) provides extraordinary remedy granted only in exceptional circumstances.).

Even if I could consider plaintiff's current challenge, I would have to deny it. Plaintiff challenges for a second time my conclusion that he was never allowed to proceed on a claim that defendant Mike Vandebrook failed to see him before his suicide attempt. He says that this conclusion was erroneous because his original complaint included allegations supporting this claim. Regardless whether allegations supporting that theory were present in the complaint, he was not granted leave to proceed on any such claim and he never attempted to identify that claim or seek leave to pursue it until summary judgment. It would have been prejudicial to allow that theory to proceed at that late date; if plaintiff wished to pursue the claim he should have asked for reconsideration of the screening order long before summary judgment.

ORDER

IT IS ORDERED that plaintiff Chad Goetsch's second motion for reconsideration, dkt. #118, is DENIED.

Entered this 25th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge