UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

PLRA C.R. 3(b) FINAL ORDER

March 6, 2019

No. 18-3445	TONY D. WALKER, Plaintiff - Appellant v. GREEN BAY CORRECTIONAL INSTITUTION HEALTH SERVICES UNIT, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 2:16-cv-01331-LA Eastern District of Wisconsin District Judge Lynn Adelman	

The pro se appellant was DENIED leave to proceed on appeal in forma pauperis by the appellate court on February 4, 2019 and was given fourteen (14)days to pay the $505.00 filing fee. The pro se appellant has not paid the $505.00 appellate fee. Accordingly,

IT IS ORDERED that this appeal is **DISMISSED** for failure to pay the required docketing fee pursuant to Circuit Rule 3(b).

IT IS FURTHER ORDERED that the appellant pay the appellate fee of $505.00 to the clerk of the district court. The clerk of the district court shall collect the appellate fees from the prisoner's trust fund account using the mechanism of *Section 1915(b).* *Newlin v. Helman, 123 F.3d 429, 433* (7th Cir. 1997).

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ORDER

March 11, 2019

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 18-3445	TONY D. WALKER, Plaintiff - Appellant v. GREEN BAY CORRECTIONAL INSTITUTION HEALTH SERVICES UNIT, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 2:16-cv-01331-LA Eastern District of Wisconsin District Judge Lynn Adelman	

Upon consideration of the **APPELLANT'S MOTION FOR RECONSIDERATION**, filed on February 25, 2019, by the pro se appellant,

IT IS ORDERED that the motion for reconsideration is **DENIED**.

United States District Court

EASTERN DISTRICT OF WISCONSIN

JUDGMENT IN A CIVIL CASE

TONY D. WALKER,
Plaintiff

v.

CASE NUMBER: 16-C-1331

GREEN BAY CORRECTIONAL INSTITUTION, et al.,
Defendants

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☑ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this action is dismissed for failure to exhaust administrative remedies.

June 25, 2018
Date

Stephen C. Dries
Clerk

s/ J. Dreckmann
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TONY D. WALKER,
Plaintiff,
v. **Case No. 16-C-1331**

GREEN BAY CORRECTIONAL INSTITUTION
HEALTH SERVICES UNIT,
DR. MARY SAUVEY, KATHY LEMENS,
S WIJAS, C BAIER, ASHLEY HUEMPTER,
A DEGROOT, D LARSON, and
WAUPUN CORRECTIONAL HEALTH SERVICES UNIT,
Defendants.

ORDER

Plaintiff Tony D. Walker, a Wisconsin state prisoner who is representing himself, filed a complaint asserting that the defendants failed, and are failing, to treat his severe pain and thus are acting with deliberate indifference to his serious medical needs in violation of his Eighth Amendment rights. Docket No. 22. On June 25, 2018, I denied the plaintiff's motion for sanctions regarding discovery against the defendants and granted the defendants' motion for summary judgment for the plaintiff's failure to exhaust his administrative remedies regarding the claim he asserted in this case. Docket No. 114.

On July 24, 2018, the plaintiff filed a motion pursuant to Fed. R. Civ. P 59 requesting that I reconsider both of my decisions. Docket No. 116. Believing that the motion had been filed late, the plaintiff filed two subsequent motions, docket nos. 118 and 120. In both motions, the plaintiff requested that I apply the mailbox rule because under this rule his motion was timely filed on July 23, 2018, the date he tendered his documents to the prison staff for filing. I will grant the plaintiff's first mailbox rule motion, docket no. 118, finding that his motion for reconsideration was timely filed on July 23, 2018. *See*

Taylor v. Brown, 787 F.3d 851, 859 (7th Cir. 2015). I will deny as moot his second mailbox rule motion. Docket No. 120.

Concerning is motion for reconsideration, "[r]ule 59(e) allows a court to alter or amend a judgment only if the petitioner can demonstrate a manifest error of law or present newly discovered evidence." *Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008 (citing *Sigsworth v. City of Aurora*, 487 F.3d 506, 511-12 (7th Cir. 2007)). "A 'manifest error' is not demonstrated by the disappointment of the losing party. It is the 'wholesale disregard, misapplication, or failure to recognize controlling precedent.'" *Oto v. Metropolitan Life Ins. Co.*, 224 F. 3d 601, 606 (7th Cir. 2000) (citations omitted). Apart from manifest errors of law, "reconsideration is not for rehashing previously rejected arguments." *Caisse Nationale de Credit Agricole v. CBI Industries, Inc.*, 90 F.3d 1264, 1270 (7th Cir.1996). Whether to grant a motion for reconsideration "is left to the discretion of the district court." *Id.*

The plaintiff first requests that I alter my judgment denying his motion for sanctions against the defendants. He states that I applied the wrong legal standard as he was not asserting that the defendants violated HIPPA to improperly state a HIPPA claim. He was asserting that the defendants violated HIPPA, and thus acted in bad faith warranting the imposition of sanctions. He further alleges that the decision ignores controlling state law and Seventh Circuit precedent and makes arguments for the defendants that the defendants did not make.

Even considering the plaintiff's clarification regarding HIPPA, I see no need to reconsider my decision not to impose sanctions. Indeed, as I stated in my order, the plaintiff put his medical records at issue when he filed this lawsuit, thus waiving

confidentiality to their discoverability. To secure such discovery, I noted that the defendants would have to have "a protective order limiting who could review the records and how they could use them *or a properly executed release form*." Docket No. 114 at 3 (emphasis added). Based my review of the evidence in the records, I found that the plaintiff provided such a release form and, therefore, the defendants did not improperly obtain his medical information.

Additionally, the plaintiff's argument that his release was for only specific documents and not medical information from Dr. Salam Syed is directly countered by the release itself. It allows for the release of "all records, reports, documents...in the possession of the Department of Corrections that relate to [the plaintiff's] physical condition." Docket No. 55-2 at 60. Dr. Syed is a physician employed by the Department of Corrections who treated the plaintiff. Docket No. 31, ¶ 2. Thus, the plaintiff provided a blanket authorization for the release of any documents Dr. Syed had produced relating to the plaintiff's physical condition.

Furthermore, the plaintiff sought sanctions because his medical records had been released on February 1, 2018, nine days before he provided the blanket release form. I note that his motion now claims that the release occurred at some unspecified point in January. Regardless, either timeframe is de minimis. Sanctions are not warranted.

Next, the plaintiff claims I erred in granting the defendants' motion for summary judgment because the defendants failed to adequately argue that he had not exhausted his administrative remedies. This, however, is the exact same argument I rejected in my summary judgment decision. While it is clear that plaintiff disagrees with my decision, his

disagreement is not a ground for me to reconsider my decision under Rule 59(e). *See Oto*, 224 F. 3d at 606.

The plaintiff further states I disregarded and failed to apply controlling precedent by intentionally limiting my evidentiary review to several documents. The plaintiff notes I reviewed his and the defendants' proposed findings of facts, the defendants' response to the plaintiff's proposed findings of fact, and the declaration of Cindy O'Donnell that had attached the plaintiff's inmate complaint, its rejection, his reply to the reject, and the reply rejection. However, those were the sole documents at issue in the defendants' motion for summary judgment for failure to exhaust.

Also, contrary to the plaintiff's contentions, Cindy O'Donnell's affidavit was properly considered as she averred it was based on her personal knowledge. *See* Fed. R. Evid. 801(c); *Thomas v. City of Michigan City, Indiana*, 672 F. App'x 587, 589 (7th Cir. 2016) *cert. denied sub nom. Thomas v. City of Michigan City, Ind.*, 138 S. Ct. 104, 199 L. Ed. 2d 65 (2017).

Lastly, the court allowed the plaintiff to proceed on only an Eighth Amendment claim that defendants failed, and are failing, to treat his severe pain. His assertion that there were other claims still pending lacks merit.

Based on the foregoing, plaintiff's motion for reconsideration will be denied.

CONCLUSION

IT IS THEREFORE ORDERED that plaintiff's motion for reconsideration (Docket No. 116) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 23rd day of October, 2018.

s/Lynn Adelman
LYNN ADELMAN
United States District Judge

Additional material from this filing is available in the Clerk's Office.