[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-10213

Non-Argument Calendar

SHAWN C. LEFTWICH,

Plaintiff-Appellant,

versus

STATE FARM INSURANCE COMPANY,
LARRY J. WATTS,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:20-cv-03703-MHC

A

Before LUCK, ANDERSON, and EDMONDSON, Circuit Judges.

PER CURIAM:

Shawn Leftwich, proceeding *pro se*,[1] appeals the district court's grant of summary judgment in favor of Defendants State Farm Fire and Casualty Company ("State Farm") and Larry Watts, a State Farm adjuster. The district court determined that Leftwich's civil action was time-barred by a suit-limitation provision in the applicable insurance policy.[2] No reversible error has been shown; we affirm.

Briefly stated, this civil action stems from water-related property damage sustained by a townhouse Leftwich rented in Loganville, Georgia ("Property"). The Property was insured by a renter's insurance policy issued by State Farm ("Policy"). Pertinent to this appeal, the Policy included a suit-limitation provision that contained this language: "Any action by any party must be started within one year after the date of loss or damage."

[1] We read liberally briefs filed by *pro se* litigants. *See Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). We also construe liberally *pro se* pleadings. *See Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

[2] The district court also concluded that Leftwich's claims against Watts were subject to dismissal for failure to effect proper service of process. Leftwich raises no challenge to that ruling on appeal. Nor does Leftwich make any substantive argument challenging the district court's order denying Plaintiff's motion for reconsideration. As a result, neither of those rulings are properly before us.

During this litigation, Leftwich has said consistently that she first noticed excess moisture and an unusual "smell of mold" in the Property on 2 May 2019. That day, Leftwich reported these conditions to the property management company's maintenance department. On 5 May 2019, Leftwich contacted the City of Loganville's Department of Community Affairs ("City") about the mold smell. In June 2019, the City determined that the moisture level in the Property exceeded acceptable levels. Leftwich says the City later provided her with the results of a mold inspection that purportedly showed the presence of mold in the Property on 2 May 2019.

On 10 July 2019, Leftwich filed a claim with State Farm under the Policy. Leftwich claimed loss of use of the Property due to mold and excess moisture levels. State Farm denied the claim on 26 July 2019.

On 8 July 2020, Leftwich filed this civil action in Georgia state court. Defendants removed the case to federal district court. Following discovery, Defendants moved for summary judgment. Leftwich filed no response.

The district court granted Defendants' motion for summary judgment. The district court determined that the complained-of water damage occurred -- at the latest -- on 2 May 2019. Because Leftwich filed her lawsuit more than one year later, the district court concluded that Leftwich's lawsuit was barred by the Policy's suit-limitation provision.

We review the district court's grant of summary judgment *de novo*, and we view the evidence and all reasonable factual

inferences in the light most favorable to the nonmoving party. *See Skop v. City of Atlanta*, 485 F.3d 1130, 1136 (11th Cir. 2007). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

We are bound by the substantive law of Georgia in deciding this diversity case. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Under Georgia law, an insurance policy -- like all contracts -- "must be construed according to its plain language and express terms." *See Ga. Farm Bureau Mut. Ins. Co. v. Kephart*, 439 S.E.2d 682, 683 (Ga. Ct. App. 1993). "Unless otherwise defined in the contract, terms in an insurance policy are given their ordinary and customary meaning." *W. Pac. Mut. Ins. Co. v. Davies*, 601 S.E.2d 363, 367 (Ga. Ct. App. 2004).

On appeal, Leftwich first contends that the district court erred in concluding that the Policy's one-year limitation period began to run on 2 May 2019. Leftwich says she first learned about the water damage in August 2019 after Leftwich received documents subpoenaed in a separate civil action involving her landlord. According to Leftwich, the one-year limitation period thus began to run in August 2019. We disagree.

The undisputed evidence in the record demonstrates that Leftwich noticed an unusual "smell of mold" and excess moisture levels in the Property -- and reported her concerns to the Property's maintenance department -- on 2 May 2019. Dissatisfied with the maintenance department's response, Leftwich then reported the

smell to the City three days later. In the light of Leftwich's complaints about the mold smell and excess moisture in the Property in early May 2019 -- and Leftwich's assertion that a mold inspection detected the presence of mold in the Property on 2 May 2019 -- the district court committed no error in determining that the complained-of water damage occurred (at the latest) on 2 May 2019.

We also reject Leftwich's argument that the Policy's one-year limitation period should begin to run on the date State Farm denied her claim (on 26 July 2019) instead of on the date of "loss or damage" to the Property. Georgia law makes clear that courts must enforce unambiguous contracts as written. *See Thornton v. Ga. Farm Bureau Mut. Ins. Co.*, 695 S.E.2d 642, 646 (Ga. 2010); *Kephart*, 439 S.E.2d at 683 ("No construction of an insurance contract is required or even permissible when the language is plain, unambiguous, and capable of only one reasonable interpretation.").

Here, the plain language of the Policy's suit-limitation provision provides unambiguously that a party must commence a lawsuit "within one year after the date of loss or damage." Applying the ordinary and customary meaning of the words "loss" and "damage," the one-year limitation period began to run on the date the water damage occurred -- not the date on which State Farm denied Leftwich's insurance claim. In *Thornton*, the Georgia Supreme Court concluded that similar policy language was "clear and unambiguous" and "plainly require[d] the insured to file suit within one year of the loss." *See Thornton*, 695 S.E.2d at 643, 646 (involving

a suit-limitation period providing that "[n]o action can be brought unless the policy provisions have been complied with and the action is started one year after the date of the loss").

Under the unambiguous terms of the Policy, Leftwich had one year after 2 May 2019 in which to file her lawsuit against State Farm. Because Leftwich filed her lawsuit in July 2020 -- more than two months after the suit-limitation period expired -- the district court concluded properly that Leftwich's civil action was time-barred under the Policy. We affirm the district court's grant of summary judgment in favor of Defendants.

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SHAWN LEFTWICH,
Plaintiff(s),

vs.

STATE FARM INSURANCE COMPANY and LARRY J. WATTS,
Defendant(s).

CIVIL ACTION FILE

NO. 1:20-CV-3703-MHC

JUDGMENT

This action having come before the court, Honorable Mark H Cohen, United States District Judge, for consideration of Defendants' Motion for Summary Judgment, and the court having granted said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendant recover its costs of this action, and the action be, and the same hereby is, **dismissed**.

Dated at Atlanta, Georgia, this 25th day of October, 2021.

KEVIN P. WEIMER
CLERK OF COURT

By: s/D. Burkhalter
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
October 25, 2021
Kevin P. Weimer
Clerk of Court

By: s/D. Burkhalter
Deputy Clerk

Appeal
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SHAWN C. LEFTWICH, **Plaintiff,** **v.** **STATE FARM INSURANCE COMPANY and LARRY J. WATTS,** **Defendants.**	**CIVIL ACTION FILE** **NO. 1:20-CV-3703-MHC**

ORDER

This case is before the Court on Plaintiff Shawn C. Leftwich ("Leftwich")'s Motion for Reconsideration [Doc. 29].

I. BACKGROUND

On October 25, 2021, this Court granted Defendants' Motion for Summary Judgment, finding, *inter alia*, that the insurance contract upon which Leftwich's lawsuit was based[1] contained a valid and enforceable suit limitation provision

[1]The above-styled lawsuit was brought to enforce a renter's insurance policy issued by State Farm Insurance Company (policy number 11-EL-K468-4). See Compl. [Doc. 1-1 at 5-7]; Renters Policy (the "Policy") [Doc. 23-2 at 78-124].

precluding any lawsuits brought over a year after the occurrence of the insured event. Oct. 25, 2021, Order [Doc. 27] at 8-9. Specifically, the Court found:

> The Policy clearly and unambiguously states that there is a one-year suit limitation provision, which provides as follows: "**SECTION I – CONDITIONS, 6. Suit Against Us.** No action will be brought against us unless there has been full compliance with all of the policy provisions. Any action by any party must be started within one year after the date of loss or damage." Viewing the evidence in a light most favorable to Leftwich, the undisputed facts of this case reveal that the alleged moisture damage which forms the basis of the claim Leftwich filed with State Farm and the basis of the present lawsuit occurred, at the latest, on May 2, 2019. Leftwich filed the above-styled lawsuit on July 8, 2020, over two months beyond the time limitation provided in the Policy.
>
> Accordingly, Defendants are entitled to summary judgment because there is no genuine issue of material fact that Leftwich failed to file her lawsuit under the Policy within the time period prescribed by the Policy.

Id. (citations omitted).

II. LEGAL STANDARD

"The Court does not reconsider its orders as a matter of routine practice." Belmont Holdings Corp. v. SunTrust Banks, Inc., 896 F. Supp. 2d 1210, 1223 (N.D. Ga. 2012) (citing LR 7.2E, NDGa.). Under the Local Rules of this Court, "[m]otions for reconsideration shall not be filed as a matter of routine practice[,]" but only when "absolutely necessary." LR 7.2E, NDGa. Such absolute necessity arises only when there is "(1) newly discovered evidence; (2) an intervening

development or change in controlling law; or (3) a need to correct a clear error of law or fact." Bryan v. Murphy, 246 F. Supp. 2d 1256, 1258-59 (N.D. Ga. 2003) (citation omitted). A motion for reconsideration may not be used "to present the court with arguments already heard and dismissed or to repackage familiar arguments to test whether the court will change its mind." Id. at 1259. Nor may it be used "to offer new legal theories or evidence that could have been presented in conjunction with the previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the litigation." Adler v. Wallace Comput. Servs., Inc., 202 F.R.D. 666, 675 (N.D. Ga. 2001). Finally, "[a] motion for reconsideration is not an opportunity for the moving party . . . to instruct the court on how the court 'could have done it better' the first time." Pres. Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps of Eng'rs, 916 F. Supp. 1557, 1560 (N.D. Ga. 1995), aff'd, 87 F.3d 1242 (11th Cir. 1996). "If a party presents a motion for reconsideration under any of these circumstances, the motion must be denied." Bryan, 246 F. Supp. 2d at 1259; see also Brogdon ex rel. Cline v. Nat'l Healthcare Corp., 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000).

III. ANALYSIS

Leftwich's Motion for Reconsideration is based on her communications with counsel for Defendants, including representations and documents she transmitted

to counsel. Mot. for Recons. at 1. Leftwich fails to articulate any valid grounds for reconsideration of this Court's October 25, 2021, Order. To the extent Leftwich presents evidence to the Court in her Motion for Reconsideration that was not before the Court at the time the Court granted Defendants' Motion for Summary Judgment, Leftwich has not argued that this evidence previously was unavailable and the law in this circuit is clear that "a reconsideration motion may not be used to offer new legal theories or evidence that could have been presented in conjunction with the previously filed motion or response, unless a reason is given for failing to raise the issue at an earlier stage in the litigation." Adler, 202 F.R.D. at 675. "[W]here a party attempts to introduce previously unsubmitted evidence on a motion to reconsider, the court should not grant the motion absent some showing that the evidence was not available during the pendency of the motion." Mays v. U.S. Postal Serv., 122 F.3d 43, 46 (11th Cir. 1997). Moreover, Leftwich has not made any argument or presented any evidence that would purport to disturb this Court's previous ruling that Leftwich filed the above-styled lawsuit outside the time limit prescribed by the Policy's suit limitation provision.

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Plaintiff Shawn Leftwich's Motion for Reconsideration [Doc. 29] is **DENIED**.

IV. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that Plaintiff Shawn Leftwich's Motion for Reconsideration [Doc. 29] is **DENIED**.

IT IS SO ORDERED this 20th day of December, 2021.

Mark H. Cohen

MARK H. COHEN
United States District Judge

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