

APPENDIX

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TABLE OF CONTENTS

Appendix A	Order of the United States Court of Appeals for the Tenth Circuit (August 15, 2024).....	1a
Appendix B	Opinion and Order of the United States District Court for the Northern District of Oklahoma (August 15, 2024).....	4a

1a

APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

No. 24-5087

D.C. No. 4:19-CV-00554-JDR-JFJ

[Filed August 15, 2024]

BO ZOU,

Plaintiff - Appellant,

v.

LINDE ENGINEERING NORTH
AMERICA, INC.,

Defendant - Appellee.

ORDER

Before PHILLIPS, MORITZ, and ROSSMAN, Circuit Judges.

This matter is before us sua sponte to consider the court's jurisdiction over this appeal. *See Hill v. Vanderbilt Cap. Advisors, LLC*, 702 F.3d 1220, 1223 (10th Cir. 2012) (this court has "an independent duty to examine [its] own jurisdiction").

Appellant Bo Zou appeals from the district court's order denying three of Mr. Zou's discovery-related motions. [ECF No. 204].

This court entered an order directing Mr. Zou to show cause why appellate jurisdiction existed, given the ongoing district court proceedings. We have before us Mr. Zou's response to that order. Upon careful consideration, we find that we lack jurisdiction for the reasons articulated below.

This court generally has jurisdiction to hear appeals from "final decisions" of district courts. 28 U.S.C. § 1291. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute judgment." *Cunningham v.*

Hamilton Cnty., Ohio, 527 U.S. 198, 204 (1999) (internal quotations omitted). Interlocutory appeals are the exception, not the rule. *Myers v. Okla. Cnty. Bd. Of Cnty. Comm'rs*, 80 F.3d 421, 424 (10th Cir. 1996). “An order that . . . sets the stage for further trial court proceedings is not final.” *Hayes Fam. Tr. v. State Farm Fire & Cas. Co.*, 845 F.3d 997, 1003 (10th Cir. 2017).

The district court’s order denying Mr. Zou’s three discovery-related motions did not end this litigation on the merits. Indeed, this matter presently is being actively litigated in the district court; the order Mr. Zou seeks to appeal notes that trial is set for December 2024. In short, the order Mr. Zou seeks to appeal is one that “sets the stage for further trial court proceedings.” *Hayes Fam. Tr.*, 845 F.3d at 1003. It is neither a final order nor does it fit within any of the recognized exceptions to the finality doctrine. Accordingly, it is not presently appealable, and we are without jurisdiction to consider this appeal. Consequently, we dismiss this appeal and deny all pending motions as moot.

APPEAL DISMISSED.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF OKLAHOMA

No. 4:19-CV-00554-JDR-JFJ
[Filed July 18, 2024]

BO ZOU,
Plaintiff,

v.

LINDE ENGINEERING NORTH
AMERICA, INC.,
Defendant.

OPINION AND ORDER

Plaintiff Bo Zou alleges that his former employer, Linde Engineering North America, Inc., terminated his employment in violation of his constitutional rights. Dkt. 13. While his case has been pending before this Court, Mr. Zou has submitted a litany of filings: two motions to rescind the limitation on deposition,¹ three motions to reconsider,² four motions to compel,³ six motions for sanctions,⁴ and nineteen objections⁵ to various Court Orders and filings. Now, before the Court are three such filings: (1) a motion to reconsider the Court's order [Dkt. 197]; (2) an objection to Magistrate judge Jayne's ruling [Dkt. 199]; and (3) a motion to rescind the Order limiting the parties to four deposition [Dkt. No. 200]. For the following reasons, Mr. Zou's motions to reconsider and requests are DENIED, and his objections are OVERRULED.

I

First, Mr. Zou asks the Court to reconsider its

¹ Dkts. 173, 200.

² Dkts. 38, 85, 197.

³ Dkts. 22, 30, 60, 86.

⁴ Dkts. 24, 31, 34, 59, 80, 86.

⁵ Dkts. 67, 72, 76, 96, 100, 101, 102, 103, 104, 105,
111, 114, 132, 146, 165, 189, 190, 199.

Opinion and Order [Dkt. 195] that overruled Mr. Zou's objection to Judge Jayne's Order [Dkt. 187] quashing Ms. Rebecca Ford's deposition scheduled for June 21, 2024. Dkt. 197. The Court found that the Order granting Linde's second motion for protection order and motion to quash was not clearly erroneous and contrary to the law. Dkt. 195. The Court also denied Mr. Zou's various requests for relief. *Id.*

The Tenth Circuit recognizes that " 'every order short of a final decree is subject to reopening at the discretion of the district judge.' " *Price v. Pilgot*, 420 F.3d 1158 1167 n.9 (10th Cir. 2005) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 12 (1983); Fed. R. Civ. P. 54(b)). To analyze Mr. Zou's request, the Court uses the three-factor approach as outlined in *SFF-TIR, LLC v. Stephenson*, 264 F. Supp. 3d 1148, 1129 (N.D. Okla. 2017). "First, the Court should restrict its review of a motion to reconsider a prior ruling in proportion of how thoroughly the earlier ruling addressed the specific findings or conclusions that the motion to consider the challenges." *Id.* "Second, the Court should consider the overall progress and posture, the motions for reconsideration's timeliness relative to the ruling it challenges, and any direct evidence that the parties may produce, and use those factors to assess the degree of reasonable reliance the opposite party has placed in the Court's prior ruling." *Id.* At 1220. Third, the Court should consider the grounds for reconsideration under the Federal Rule of Civil Procedure 59 as outlined in *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). *Id.*

These grounds for reconsideration are: “(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.” *Id.* But a motion to reconsider “is not—and is not supposed to be—fair fight procedurally. The deck is stacked against a movant for reconsideration.” *SFF-TIR, LLC*, 264 F. Supp. 3d at 1221. A motion for reconsideration is not “an appropriate vehicle to reargue an issue previously addressed by the court when the motion merely advances new augments, or supporting facts which were available at the time of the original motion.” *Id.* at 1214-15.

A.

As to the first factor, the court should consider “both...the amount of the time and energy the Court spent on [the issue], and on the amount of the time and energy the parties spent on it—in briefing and orally arguing the issue, but specifically if they developed evidence on the issue.” *Id.* at 1219. This requires the Court to look “not to the overall thoroughness of the prior ruling, but to the thoroughness with which the Court addressed the exact point or points that the motion to reconsider challenges.” *Id.* at 1220. There is no question that both parties have had ample opportunities to brief the issues surrounding Ms. Ford’s deposition. Dkts. 179, 181, 182, 184, 186, 189. The Court addressed Judge Jayne’s reasoning for granting the motion to quash and recognizes that “Rule 26(c) gives the court discretion to issue a protection order for good cause.” Dkt, 195 at 2. Judge Jayne provided sound reasoning for quashing the deposition as scheduled and the

Court determined that her reasoning was not clearly erroneous or contrary to law. Thus, the first factor weighs against reconsidering the Order.⁶

B.

Looking at the second factor, the case's progress and posture, the discovery deadline is July 26, 2024, and the trial is set for December. Dkt. 170. In its Original Order, the Court provides several options for Mr. Zou to reschedule Ms. Ford's deposition. Dkt. 187 at 2. To the Court's knowledge, Ms. Ford's deposition has not taken place and reconsidering the Court's Order would not change the fact that it must take place by July 26.⁷ Because the Case has been pending since 2019, Mr. Zou has had sufficient time to depose Ms. Ford. This factor weighs against the reconsideration.

⁶ Mr. Zou asserts that the Court "did not address Plaintiff's request to prohibit Defendant from filing motion to quash and motion for protection order" and his request for monetary relief. Dkt. 197, at 2-3. But Mr. Zou did not provide any evidence that Linde's motions to quash and motions for protection order, although numerous, have been filed in bad faith. Many of the Linde's motions are a result of Mr. Zou refusing to confer with the opposing counsel. Further, Mr. Zou is not entitled to travel expenses or lost wages because he was already required to travel to Tulsa for Ms. Hoey's deposition. And again, these expenses stem from a decision made by Mr. Zou—Linde proposed a virtual deposition which would have eliminated the travel expenses and the need to quash the deposition altogether. Dkt. 179 at 3.

⁷ During the motion hearing held on June 27, 2024, the parties were reminded that the discovery deadline remains on July 24, 2024, and that any objections or motions will not stay this deadline. Dkt. 196.

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C.

And for the third factor, Mr. Zou has not shown that there has been a change in controlling law, that there is new evidence available, or that reconsideration is necessary “to correct clear error or prevent manifest injustice.” *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012. Mr. Zou seeks to “revisit issues already addressed [and] advance arguments that could have been raised in prior briefing.” *SFF-TIR, LLC. v. Stephenson*, 264 F. Supp. 3d at 224-15. The third factor weighs against reconsideration. Thus, Mr. Zou’s motion to reconsider the Court’s Order [Dkt. 197] is DENIED.

II.

Next, Mr. Zou objects to Judge Jayne’s discovery rulings during a telephone hearing on June 27, 2024. Dkt. 199. The hearing was held to discuss Mr. Zou’s initial motion to rescind the discovery limitations [Dkt. 173]. During the hearing, Judge Jayne denied Mr. Zou’s request. Dkt. No. 196. Also, at the hearing, Linde orally moved to extend its production deadline from June 30, 2024, to July 24, 2024, and the motion was granted. Dkt. 199 at 2. Mr. Zou objects to the extension and asks the Court to extend the discovery deadlines. *Id.* at 3-5.

When reviewing a magistrate judge’s order regarding a “pretrial matter not dispositive of a party’s claim or defense,” the district judge “must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is

contrary to law.” Fed. R. Civ. P. 72(a). “The clearly erroneous standard requires the district court to affirm unless it ‘on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’ ” *Orglesbee v. Block, Inc.*, No. 18-CV-00560-GKF-CDL, 2023 WL 4539703, at *3 (N.D. Okla. May 10, 2023) (quoting *Allen v. Sybase, Inc.*, 468 F.3d 642, 658 (10th Cir. 2006)). “By contrast, the contrary to law standard permits plenary review as to matters of law.” *Mayer v. Bufogle*, No. 21-CV-00170-GKF-SH, 2022 WL 1452746, at *2 (N.D. Okla. May 10, 2022) (internal quotations and citations omitted).

First, Mr. Zou objects to Judge Jayne’s denial of his requests to rescind deposition limitation because the Court did not allow him to present any arguments or evidence during the hearing. Dkt. 199 at 1. But argument on the deposition limit was not needed and the denial was not clearly erroneous or contrary to law. *See infra* Section III. Mr. Zou’s objection to his request to rescind the deposition limit is **OVERRULED**.

Mr. Zou also objects to the production extension because Linde failed to confer with him prior to moving for the extension, failed to submit a written motion, and failed to show good cause for the extension. Dkt. 199 at 3. Although parties are generally required to meet and confer regarding discovery issues and submit the issues first in writing, [t]he Court may excuse the requirements *LCcR 37-1* for good cause or when the administration of justice requires.” Local Civil Rule 37-1. Here, Mr.

Zou has a long history of refusing to confer with Linde regarding discovery issues as evidenced by the numerous discovery motions. Linde reasoned that additional time was needed to provide Mr. Zou with new documents he requested on May 31, 2024. Dkt. 196. Given that the discovery deadline is far approaching, it was reasonable to allow Linde to make an oral motion and to excuse the meet and confer requirement in this situation. The extension and granting extension during the motion hearing was not clearly erroneous or contrary to law. Mr. Zou's objection is OVERRULED.

Separately, Mr. Zou asks to extend discovery deadline because Linde's new production deadline falls two days before the close of discovery. Dkt. 199 at 5-6. He argues that Linde will likely refuse to produce any relevant documents, he will not have any new documents to present to Ms. Ford during her deposition, and he will be unable to ask for new documents after the deposition. *Id.* Linde has agreed to waive any timeliness objections to document requests which stem from Ms. Ford's deposition, so long as Mr. Zou's follows the proper procedure for such requests. Dkt. 186 at 4 n.3. Further, Mr. Zou had sufficient documentation upon which to depose Ms. Hoey, so the Court finds little weight in his argument that he needs more documents to depose Ms. Ford. Any prejudice Mr. Zou claims at this stage in the proceedings is merely speculative. Should Mr. Zou determine that additional document requests are necessary as a result of Ms. Ford's deposition, he is directed to first file a request with the Court for such documents and the Court will the validity of such requests. Mr. Zou's request to extend the discovery

deadline is DENIED at this time.

III.

And finally, Mr. Zou filed a motion asking the Court to (1) rescind the deposition limit, (2) re-rule his motion for sanctions [Dkts. 30, 31, 60, 86, 89, 173, 180] and (3) compel Linde to produce specific documents and answer interrogatories which have been at issue since 2020. Dkt. 200. As to the limits on depositions, Federal Rule of Civil Procedure 26(b)(2)(A) grants the Court authority to limit the number of depositions and interrogatories a party may conduct. Here, the Court limited both parties to four depositions each. Dkt. 108 at 1-3. In the Order, the Court stated: “The parties may seek relief from this deposition limit, **but only after conducting the number of authorized depositions and upon a showing of good cause.**” *Id.* at 3. Based on the parties’ representations, it appears that Mr. Zou has only deposed one person: Ms. Deana Hoey. Dkt. 189 at 3. Accordingly, the Court will not consider rescinding the limitation on depositions until Mr. Zou has completed his four allotted depositions. The request is DENIED at this time.

In the same Order limiting the depositions, the Court prohibiting Mr. Zou from “filing further motions for contempt or sanctions in relation to any of Defendant’s written discovery responses.” Dkt. 108 at 9. During the telephone conference on June 27, 2024, the Court advised the parties that the prohibition was lifted as to the filing of new written discovery only but was still in place as to any prior

alleged bad-faith discovery conduct. Dkt. 196. The Court declines to re-address the motions for sanctions identified by Mr. Zou [Dkts. 30, 31, 60, 86, 89, 173, 180] because the request is in violation of the limited protection order and the issues have already been addressed by the Court. Further, Mr. Zou has failed to satisfy to any of the *Servants of the Paraclete* factors which would require the Court to reconsider the Orders. Mr. Zou's request to re-rule on his motions for sanctions is DENIED.⁸

Mr. Zou also asks the Court to compel Linde to produce certain documents and answer interrogatories. Dkt. 200 at 7-11. The first motion to compel production of these documents and responses to interrogatories was filed in 2020. Dkts. 22, 60, 86. This issue has been heavily briefed and previously ruled on by this Court. Dkts. 37, 108, 138, 143. Mr. Zou has failed to demonstrate that there are any new issues relating to these items of discovery. And because Mr. Zou has failed to satisfy any of the *Servants of the Paraclete* factors, the Court finds no reasons to re-rule on the previously litigated discovery issues. Further, Mr. Zou has failed to show any new sanctionable actions by Linde. Dkt. 200 at

⁸ Mr. Zou also argues that the Magistrate Judge did not have authority to issue the protection order because neither party consented to a Magistrate Judge. Dkt. 200 at 4. But Northern District of Oklahoma Local Rule 37-2(a) states that "[u]less otherwise directed by a district judge, all discovery matters shall be resolved by order of the assigned magistrate judge. Magistrate Judge's orders shall remain in full force and effect as an order of the Court unless reversed or modified by a district judge."

4-7. Mr. Zou's renewed motion to compel and request for sanctions is DENIED.

IT IS THEREFORE ORDERED that Mr. Zou's motions to reconsider [Dkt. 197] is DENIED; his objections to the Magistrate Judge's order [Dkt. 199] are OVERRULED; the request to extend discovery deadline [Dkt. 199] is DENIED; and his motions to rescind the deposition limits, re-rule on motions on sanctions, compel certain discovery, and for sanctions [Dkt. 200] are DENIED.

DATED this 18th day of July 2024.

John D. Russell
United States District Judge