No. _____

In The

# Supreme Court of the United States

SYMON MANDAWALA,

*Petitioner*,

v.

BAPTIST SCHOOL HEALTH PROFFESSIONS , ET AL.,

*Respondents*.

**On Petition for a Writ of Certiorari to the Fifth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

SYMON MANDAWALA
P.O. BOX 5512
San Antonio, TX 78201
(206) 931-5636

*Pro-se Petitioner*

## QUESTIONS PRESENTED

This case comes from Texas state district court and Baptist's response to a state court complaint with Title IV, breach of contract, and other state claims, demanding full disclosure on December 14, 2018. On January 11, 2019, I filed my original and complete disclosure in state court. Still, a complaint was dismissed after the defense representative met the judge in her chamber without me and seved me the motion a day after dismissal. In federal district court, on August 23, 2022, during the pretrial schedule, the trial judge asked the Baptist representative how many witnesses would testify on trial day. I said seven (same names I disclose in state court), and Baptist said six. Then Baptist filed a motion for summary judgment stating I refuse to provide citizenship paper despite I tried to contact the Baptist representative for clarification, but they did not respond to my inquiry. Instead, they filed a motion for summary judgment. Later, I found out that the case was discussed with a Baptist representative without my involvement. Then, on December 16, 2022, the trial judge, ex parte, called me at 210 244-2899, stating his intention to rule on the motion and giving me a limited 48-hour period to respond.

1. Whether the discovery process and exchange of evidence in state court do not apply in federal court pursuing to the full faith and credit clause of Article IV of the US constitution? Whether a district court judge's knowledge of witnesses available to testify on a trial date before the defendant files a summary judgement motion are not the "Facts Unavailable to the Nonmovant" In light of Fed.R.Cv.P 56(d)?

2. Can an educator receive, investigate, and recommend punishment if a student is accused, while

the state law designates such patient complaint claim to a government agency or state attorney general's office to do so?

## PARTIES TO THE PROCEEDING

Petitioner Symon Mandawala was the plaintiff in thedistrict court and appellant in the Fifth Circuit.

Respondents Baptist School of Heath Professions appellee in the Fifth Circuit.

Baptist School of Heath Professions and others dismissed were defendants in the US district court.

Baptist School of Heath Professions was defendant alone in the Texas district court.

## RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Mandawala* v. *Baptist School of Health Professions, et al.*, No. 23-50258,5th Cir. (May 6, 2024) (denying rehearing en banc);

- *Mandawala* v. *Baptist School of Health Professions, et al.*, No. 21-50258, 5th Cir. (April 2, 2024) (Affirm the defendants' motion for Summary Judgement granting); and

- *Mandawala* v. *Northeast Baptist Hospital, et al.*, 21-1407 (petition for writ of certiorari was denied)

- *Mandawala* v. *Northeast Baptist Hospital, et al.*, 16 F4th 1144(5th Cir. 2, 2021) (Affirming motion to dismiss other parties and claimes); and

- *Mandawala* v. *Baptist School of Health Professions, et al.*,No. 5:19-CV-01415, W.D. Tex. (March 14,2023) (granting motion for summary judgement and other defendants' motion to dismiss on September 3, 2020).

Texas state district court 438

- *Mandawalav. Baptist School of Health Professions,etal.*,No.2018CI19490, (October 2, 2018)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, related to this case under Supreme Court Rule 14.1(b)(iii).

## TABLE OF CONTENTS

## TABLE OF APPENDICES

TABLE OF AUTHORITIES

## PETITION FOR A WRIT OF CERTIORARI

**1. (a) Article IV, Section 1 to the United States Constitution " Full Faith and Credit shall be given in each state to the public acts, *Records*, and *judicial proceedings* of every other state. And congress may be general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof coded 28 USC §1738;**

When the case was in state district court, on December 14, 2018 Baptist requested full disclouser during state preceeding. First *I fully comply with their request at the time and submit my entire disclousre on January 11, 2019.

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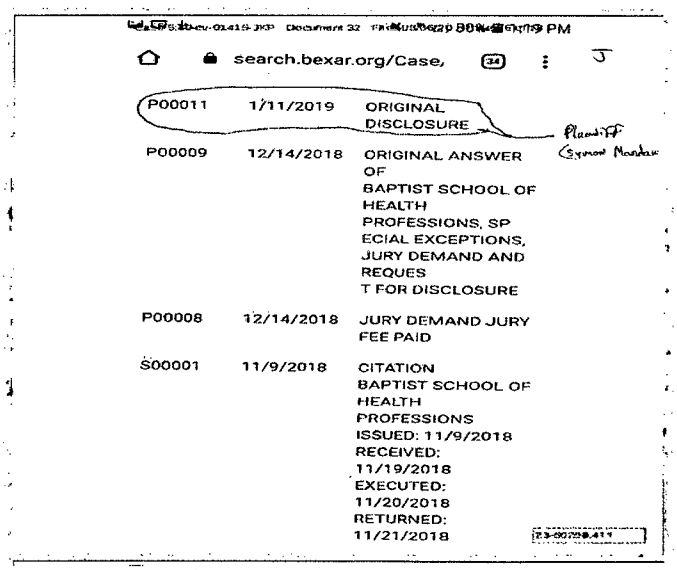
*Texas District court record showing Mandawala disclosed.



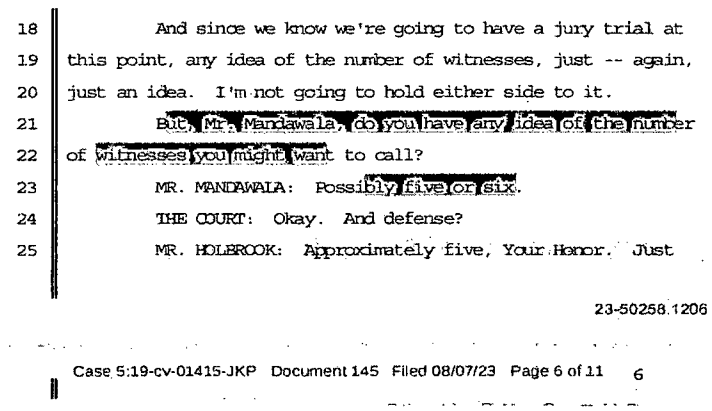
search.bexar.org/Case,

| | | | |
|---|---|---|---|
| P00011 | 1/11/2019 | ORIGINAL DISCLOSURE | Plaintiff Cyrus Mandawala |
| P00009 | 12/14/2018 | ORIGINAL ANSWER OF BAPTIST SCHOOL OF HEALTH PROFESSIONS, SP ECIAL EXCEPTIONS, JURY DEMAND AND REQUES T FOR DISCLOSURE | |
| P00008 | 12/14/2018 | JURY DEMAND JURY FEE PAID | |
| S00001 | 11/9/2018 | CITATION BAPTIST SCHOOL OF HEALTH PROFESSIONS ISSUED: 11/9/2018 RECEIVED: 11/19/2018 EXECUTED: 11/20/2018 RETURNED: 11/21/2018 | |

Secondly, I provided Baptist with same material in federal district court docket 63 and 90 respectively. The request that raised the motion for summary judgement was the third time and they claim that I did not comply with Fed.R.Cv.P 56 becaus this time they added request of my citizenship document which is irrelevant to either of my claims. This is coming from the same record the trial court says there is nothing in the record. See *infra 21*a-22a It is a harrassment to me because in state court preceedings Baptist never raised issue of non compliancy when they were fully served.

Furthermore, the district court granting the summary judgement motion and denied to reconsider based on record established in state district court and affirmed by the panel's. Baptist requested disclouser and was fully provided while in federal claiming non compliance is not only an act of bad faith (see Fed.R.Cv.P 56(h)) but as well as contradicting or ignoring the US constitional requirment of full faith and credit clause. If there was no private communications regarding this issue by the district court and parties, I could have concluded the court made an error. Ignoring or denying full faith and credit clause, after ex-part with phone calls with Baptist only without me the come to me privatly is questionable act by the court. I had expectations that this will be resolved with status conference with both parties present. Unresponsiveness of baptist is being disregarded how can i take deposition when the they were not responding? Baptist seek ex-parte help from trial court after realizing there is no other way to win a case with question number 2 facts and evidence.

**1 (b) a district court judge's knowledge of witnesses available to testify on a trial date before the defendant files a summary judgement motion satisfy the "Facts Unavailable to the Nonmovant Party" In light of Federal Rule Civil Procedures 56(d)**



And since we know we're going to have a jury trial at this point, any idea of the number of witnesses, just -- again, just an idea. I'm not going to hold either side to it.

But, Mr. Mandawala, do you have any idea of the number of witnesses you might want to call?

MR. MANDAWALA: Possibly five or six.

THE COURT: Okay. And defense?

MR. HOLBROOK: Approximately five, Your Honor. Just

23-50258.1206

Case 5:19-cv-01415-JKP Document 145 Filed 08/07/23 Page 6 of 11 6

During the pretrial conference on August 23, 2022, which was approximately sixty days prior (*contrast infra* 21a-22a) to Baptist decided to file a motion for summary judgment without including any testimony from witnesses who were intended to testify at the trial. Despite the trial judge having a clear understanding of the witnesses each party intended to bring, I was unexpectedly held responsible for not complying with (see *infra 21a-24a)* Rule 56 because I didn't provide Baptist's lawyers with copies of my citizenship status. This request, once agin as you can see, is completely irrelevant and has no impact on the case, especially when compared to the crucial importance of the witnesses' testimony. Moreover, it's important to note that the trial judge spoke to a Baptist attorney in private before contacting me, which raises concerns about procedural fairness that cannot be overlooked.

**2. Can an educator receive, investigate, and recommend punishment if a student is accused of abusing patient, while the state law designates such patient complaint claim to a government agency or state attorney general's office to do so?**

Texas state law disgnate patient complaint of abuse as criminal offense. The abuse claimes required to be investigated by law enforment agencies of the Texas state. ** see Texas Health and Safety code § 161.132 (a) ***Mrs. Frominos who is a

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** Texas Health and safety code § 161.132 (a) A person ... or other person associated with ....or hospital that provides comprehesive medical rehabilitations services, who reasonably believe that or who knows information that would reasonably cause a person to believe that the physical or mental health or welfare of the patient .... has been, is, or will be adversely affected by abuse or neglect caused by any person shall as soon as possible report the information supporting the belief to the *agency that licenses the facility* or to the appropriet *state health care regulatory agency*." words ommited

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Case 5:19-cv-01415-JKP Document 137 Filed 12/27/22 Page 22 of 53

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Moorman, Melissa

From: Frominos , Debra
Sent: Wednesday, May 16, 2018 7:08 PM
To: Moorman, Melissa
Subject: RE: Next rotation schedule

I find it interesting that the lead tech in a facility who does not even have ONE student sees fit to apprise you of situations in my department over which I believed I had some authority, but apparently that is not the case when you have a student apparently no one wants. Odd that you have 10 empty clinical sites at this time, but you are questioning my request to not have to overlap two people in training, and yes, they will overlap. I thought it would make more sense to move Symon now rather than wait till his final week and a half here, and have him have to start over at another facility. I also believed we were permitted to request not having a student when we have a new employee in training, as I know St Lukes and other facilities have refrained from having a student under those conditions. There has NEVER been a time that NBH has not been open to students, and usually two, on occasion three when there was a need. Not only that, I believe we have shown outstanding support for the school, particularly considering the battles I've fought on your behalf in recent months. So it is surprising that I cannot make a simple request, but based on my observations of the student in question, I can understand why you cannot find another place to take him.

So I'll abandon my attempt to justify my actions based upon the need to give Kelsey our full attention, true as that may be, and instead inform you of the fact that I've had multiple complaints about Symon, from other staff members and from 2 patients in the past 2 clinical days who complained about him being too rough, and one I will remind to allow him to finish the exam. Since I cannot be diplomatic and have him removed for my own reasons, you get to hear instead about how difficult he is to work with, and I suspect this will not be the first time you've heard this. He has a challenging attitude to tolerate, in that he apparently knows a better way to do everything and is not in the slightest open to

private person was claiming to receive two patientcomplaints and she is recommending school to impose punishment to me. See *infra* *22*a-23a That's why I asked the en-banc court of Appeals, where does Mrs. Frominos prosecuteral power to recive the patient complaint investigate and recommend the punishment come from. 2, was not suppose to be some orth to the state for Mrs. Frominos to prosecute the patient complaint in order for the summary judgement motion to be granted. 3, does the panel and the district court grant the summary judgement motion not endosing private citizen prosecution or its only me where constitution say Symon Mandawala can be prosecuted by anyone who doesn't like him with any crime?

This is simply a question of lack of prosecutirial powers by Mrs. Frominos based on Texas Health and safety code § 161.132 (a). the law itself says if she was belived I abused two patients she should have report whereever Baptist Northeast hospital was lincesed. She took matters in her own hards and instructing the school about punishment I can get. The school ended up follow that instruction at the end of the course to remove my name from graduation list despite finishing any other non clinical practise clases despite everything she said never happen with me or my presents.

## OPINIONS BELOW

The original opinion of the court of appeals opinion are reported and available as unpublished opinion USCA 23-50258. App. 2a-15a. The denial of rehearingen. Pet. App. 1a. The opinion of

the United States District Court for the Western District of Texas granting a motion for summary judgement denying reconsideration. Pet. App. 15a-24a.

## JURISDICTION

The original opinion of the court of appeals was filed on April 4, 2024. Pet. App. 1a-15a. On April 18, 2024 I filed a request to extend time to file petition rehearing en banc. The motion was denied on April 22, 2024 Pet. App. 1a but was mailed to me four months later on August 14, 2024. The Appeal's court clerk on my phone inquiry said they never send the motion seeking 12 days to the judges because it was filed late. Despite it was filed on April 18, 2024 and never gave me the reason why the clerk decide not to mail the order to me until four month later depriving me in process the right to seek a stay of the judgement in timely manner. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. 1254(1) to take up this untimly petition for the cause created by Appeal's court clerk.

## CONSTITUTIONAL, RULES AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 1 to the United States Constitution " Full Faith and Credit shall be given in each state to the public acts, Records, and judicial proceedings of every other state. And congress may be general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof coded 28 USC §1738."

The Federal Rules of Civil proceedure 56 (d) "When Facts Are Unavailable to the Nonmovant"

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Section 161.132(a)(e) Texa Heath and Safety (reporting of abuse and neglect or of illegal, unprofessional, or unethical conduct.) (a)...or other Person associated with..., or hospital..., shall as soon as possible reporting infomation supporting the belief to the agency that licences the facility or to appropriet state health care regulatory agency

## STATEMENT

### A. Factual background

Eight years ago in 2016, I started my college class in Diogonost medical sonography at Baptist school of health Professions. I pass my first classes without any struggle or fail until the school sent me for attachment to their associated hospitals. [1]The hospital department was understaffed, and I was

[1] The Email says, "I have a student currently at Missiontral and need to pull the student from the site **due to their staffing issue"**



Plaintiff's Exhibit



denied access to scan patients by staff members, in particular the primary technicians.However, this was contrary to the course requirements since the course manual requires the student to scan and send images to Mrs Palmer (Class instructor) at school for the student's work to be recorded and evaluated. understaff issue was absolutly affecting my progress. It reached a point where I was asked to patient impersonte for use in the recruiting process of new staff. This was a staff duty, but it was done by a student. Other hospitals like Northeast baptist hospital the problem was staff polical divisions. There was two long time service employees working in Ultrasound department Mr. Virj pascal (retired) and Mrs. Debra Frominos. Because of working closely with Mr. Pascal I become an opponet to Mrs. Frominos unknowingly. That was when Mrs Frominos lying about reciving 2 patient complaint that of abuse by me. To suprise of many she reported all sorts of made up stories of patient complaint to School by Email without reporting to the regulatory as Texas law requires. My recollection is only based on the patient who told Mrs. Frominos that she does not want a male student during her scanning and I was outside her patient room the entire time of scanning. Mrs Frominos discremination bias towards non-white students charging them with incompetence and misconduct did not started with me only. Some student before me complained about Mrs. Fromimos preffer white student to be at her site. Another challenge to the hospitals were equipment in some hospitals.

[2]Some equipment were knew technology that even the people who suppose to assist me needed training for it. Contrast *infra* 22a-24a

After numerous discussions with school officials, including two presidents at the time, the school falsely accused me of mistreating the patient, using Mrs. Fromimos's email as evidence. That's where the state lawsuit started in Texas courts. After filing the state complaint on December 14, 2018, Baptist requested full disclosure during the state preceding. I submitted the document and names of

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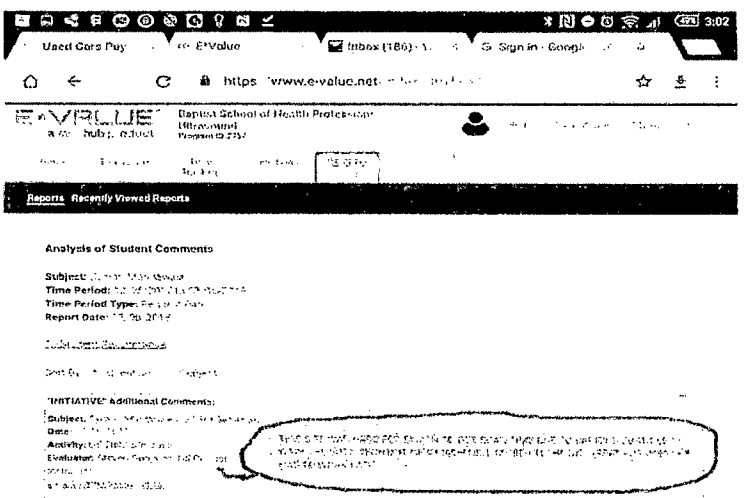
[2] Hosptital instructors report to school about staff and equiment issues. This site was hard for Symon to get scan time due to various obstacles with the site (Tech out, new machines) He did great for what he had to work with" contrast to *infra* 19a-20a





the individuals they can contact with full details of their contact numbers on January 11, 2019.After filing the plaintiff's summary judgment, the court scheduled a hearing. However, four days before the hearing, the Baptist filed a motion to dismiss. During the hearing, the judge discussed Baptist's motion, which I had not received until after the case was dismissed. I requested a CD-ROM of the record and was surprised to find that the online record stated "case dismissed by plaintiff." As a result, I filed a federal complaint instead of appealing to the state court of appeal.

The federal district court dismissed some claimes for failour to state the claim e.g defirmation regarding patient complaint that never happen at all and no state agency recieved any information about it. I tried to appeal the dismissal and the district court office gave me a CD-rom of records without court of appeals record numbers in it. I tried several time to get new CD-rom from the office of the district court clerk while preparing appeal brief. The office never gave me the one until the brief filed period was pass. When I contacted the district clerks office to give my grievance the apologised and told me the clerk who was responsible she is no longer in san antonio federal court house. The no record supported brief went on like that and the court of appeals affirmed the judgement and this court denied my petition for writ of certiorary.

After mediation failed, on a status conference dated 08/23/2022, two months before Baptist filed their summary judgment motion, Judge Pulliam asked me, "Mr. Manadawala, do you have any idea of

the number of witnesses you might want to call?" (ld, pg3) I responded, "possibly five or six." Judge Pulliam then said, "Okay," and further asked, "defense?" Mr. Holbrook responded, "Approximately five, your honor." (ld, pg3) Subsequently, the district court issued a discovery period schedule with a confidentiality and protective order in the district docket 117. (ld) The order was issued, blocking me from requesting any material related to what the school and hospital claimed they received - two patients' complaints for abuse by me as shown on *ld pg* 4, paragraph 2, sentence #1. Unfortunately, the order was meant to stop only me, as the defense went on to collect my medical status information from both my counselor and school counselor to be used in this case without my consent.

I received an email from the school's attorney confirming that they have my medical status documents and requesting to schedule a deposition with me. Almost 95% of the requested materials were already provided in document 63 and 90. The only requested materials not in document 63 and 90 are my tax returns and citizenship documents, which seem unrelated to the case. These materials do not contain relevant information about my status as an American citizen involved in a court case, discrimination based on gender, or breach of contract. It seems like the request was made to frustrate or harass me.

I made multiple attempts to schedule a deposition with Mr. Holbrook for October 3, 2022, but did not receive a response until December 14, 2022. Despite my efforts, they proceeded to file for

summary judgment, alleging that I did not respond to their discovery request. I was deeply concerned about the lack of opportunity to respond, particularly considering their failure to follow up with me after our initial attemp on October 3, 2022..

After discovering that I had attempted to contact them on October 3, 2022 (see infra. 17a-18a), she informed me that they needed to inform Judge Pulliam about my attempts before the discovery period ended. I noticed that they had been working with a judge on this motion. We agreed to reschedule for January 4, 2023, and for me to be repositioned after the pivotal pretrial conference on that day. While waiting as agreed with Baptist counsel, I anticipated that there might be a possible status conference. 48 hours later, after speaking on the phone with a Baptist lawyer, Judge Pulliam called me on this number +1210-244-2899. He said he would give me 48 hours to file an answer to Baptist's motion for summary judgment because he wants to rule on the motion and give me that chance to respond before he does so.

They attempted to confuse me by submitting multiple amendments to the motion for summary judgment, despite having previously agreed with the judge not to specify which docket amendment I should respond to. Regardless of which docket I responded to, the judge had already planned to refer to a different one. I inquired of the judge, "Which summary judgment are you referring to? Because there were three different dockets, each filled with different evidence to support each distinct one. Docket 125 contains three, docket 126 contains four,

and docket 127 contains five." Subsequently, I was put on a 5-minute brief hold, and 15 minutes later, the judge's courtroom deputy called me again, informing me that Judge Pulliam was going to issue an order for me to respond. The delay in the response was evident. Later that day, Judge Pulliam indeed issued that order.

When Judge Pulliam granted the summary judgment and dismissed the case, I still had nine days left to respond to the summary judgment amendment motion on the last docket number 127 because the amendments superseded the original time to respond to the original motion. However, the judge said that is not how it works. The presiding judge, through his actions, demonstrated a blatant disregard for the legal process by engaging in inappropriate ex-parte court conferences with the defense lawyers. This conduct necessitates a review of the case.

"In discussing this issue with the parties, the Court learned they may have been confused about what effect the defendant's amended motions (ECF Nos. 126, 127) had on the deadline." I understand that he called me on a private phone call where he said I was planning to rule on Baptist's motion for summary judgment. I was not there either when he was discussing it with Baptist attorneys.

I filed an Appeal with the Fifth Circuit Court of Appeals, a crucial step in reviewing the Federal Rules of Civil Procedure 56(d). The trial judge's evident knowledge of the unavailability of facts from individuals I assured would be available to testify is a crucial aspect of this case. The appeals court

affirmed the district court judgment (infra 1After the order was issued on April 4, 2024, by the Fifth Circuit Court, I took immediate action. I filed a motion to request a twelve-day extension and stay of time for filing the petition for rehearing during the period of filing a petition for rehearing, which ends on April 18, 2024. This was because someone seconded my petition for rehearing for grammar and proper language. I also represented myself because the trial judge appointed an attorney I knew well, who is a friend of one of the Baptist lawyers. On April 22, 2024, the court denied the motion. However, the court of appeals clerk never sent any copy of the order denying me an extension and staying the judgment until August 14, 2024.

The lower court denied my request for an extension on April 22, 2024, but failed to inform me as required. As a result, I filed a petition for rehearing on May 1, 2024, only to be denied. When I sought an extension in this court, my application was rejected as untimely. Upon clarification, it was revealed that the lower court had rejected my request on April 22, 2024, but the order was not sent to me until August 14, 2024. The lower court claimed I filed the motion on April 22, 2024, but I actually sent it on April 18, 2024, which was within 14 days from the date of the original order

**Reasons for Granting the Petition**

This case has witnessed numerous inappropriate court actions, many of which have taken place in my absence. Baptist, in collaboration with court officials, including judges, has been orchestrating these actions without my presence. From the court of appeals clerk's offices to the trial court, district

court clerk's offices, and even state court offices, there have been instances of Baptist attorneys working with court officers on this case, all without my presence.

A. *Court of Appeals order dated April 22, 2024 denying extention of time not sent until August 14, 2024*

On April 22, 2024, the Fifth Circuit Court of Appeals denied my motion for a twelve-day extension of time, *infra* 1a which I filed on April 18, 2024, to submit a petition for rehearing en banc. However, [3] I received the court's denial order on August 14, 2024. This delay caused me to miss the seven-day window to request a stay of the judgment. Unaware of the denied motion, I went ahead and filed my petition for rehearing en banc, but it was not considered due to the court's order that I had not yet received. Because of that, I also faced significant confusion and challenges when I sought an extension to file a petition for the writ of certiorari. These procedural

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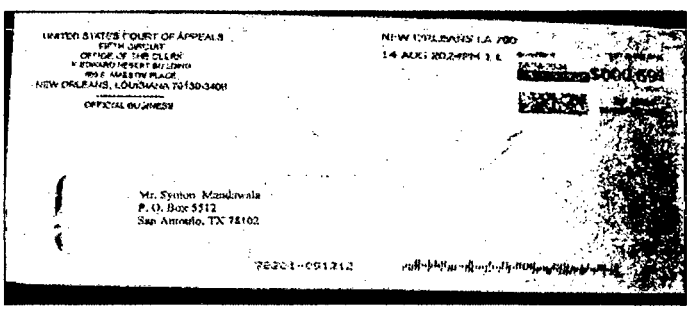
[3] The order April 22, 2024 denying twelve days extension to file petition for rehearing was dated is inside but was mailed to me August 14, 2024

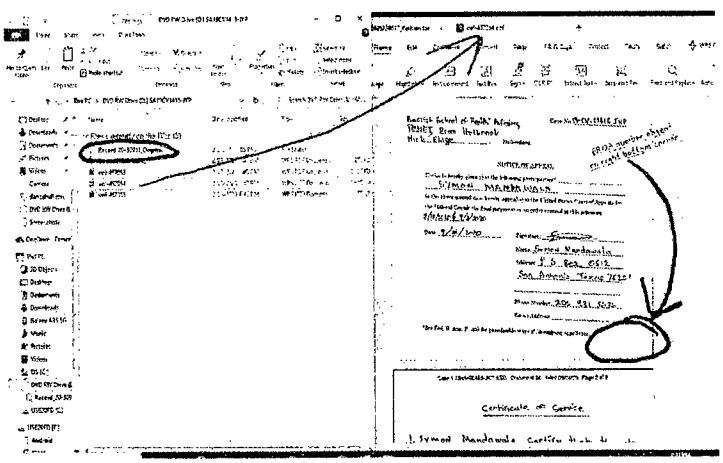


errors have created a situation that needs to be reconsidered.

B. *I received CD-Rom of Records in Appeals court without Electronic record numbers*

In 2020, I made efforts to appeal the partial dismissal of my first federal case # 20-50981. I requested electronic records from the trial court clerk for the appeal and [4] received a CD-ROM without the necessary appeal numbers. Despite repeated attempts to obtain a new CD-ROM with proper numbering, the issue was not resolved up to the brief filing was due. The clerk verbally apologized but did not provide a written apology, saying the clerk who made the mistake was no longer working at the San Antonio courthouse. I

[4] The CD-Rom had no EROA numbers for citation. It was beyond my control to force the disrict court clerk to reproduce the CD after several attempt to get one. The citation number always found at the right bottom cornor. (This court's clerk returned this copy of the CD back to me)



lost the appeal and since it all looks now it wasn't coincedent.

C. *The district trial court started conducting each individual partie private status conferences since I raise a question of school officials lacking prosecuturial powers.*

The presiding judge had expressed to Mr. Hillard, an attorney member of the group of African American lawyers in San Antonio, that he did not like me because I did not want my case to go to an independent mediator. The presiding judge was a group member before his appointment to the federal bench. By then, I had only two federal cases, 19-cv-0635 JKP and 19-cv-1415 JKP, in my entire life, and both cases were in his court. Mr. Hillard is not part of 19-cv-1415JKP, but he represented one of the witnesses in 19-cv-0635 JKP. Mr. Hillard's remarks to his client about the presiding judge disliking me because I go to court prompted me to find out how Mr. Hillard ended up talking about my dislike of the independent mediator. Meanwhile, it was the only case where 19-cv-1415JKP had been pushing the case to mediation.

Mr. Hillard's comment to his client regarding case 19-cv-1415 JKP prompted me to conduct thorough research about the judge. I discovered that the judge's former employer in private practice is a close friend to attorneys representing the Baptists. Additionally, they shared office space when the judge was in private practice. Furthermore, the judge is a church member and owns the Baptist school in San Antonio, which is the subject of my lawsuit. This information gives me confidence and explains why the Baptist lawyers privately

contacted the judge when I attempted to reach out to them.

The judge issued an order for both parties to attend a status conference to address any procedural issues before. However, when questions arose about Mrs. Fromimos's lack of power to prosecute the patient's complaint, I observed a shift in the situation. [5] The judge and the courtroom staff began to communicate with me through a private phone call. It's crucial to have open communication in order to

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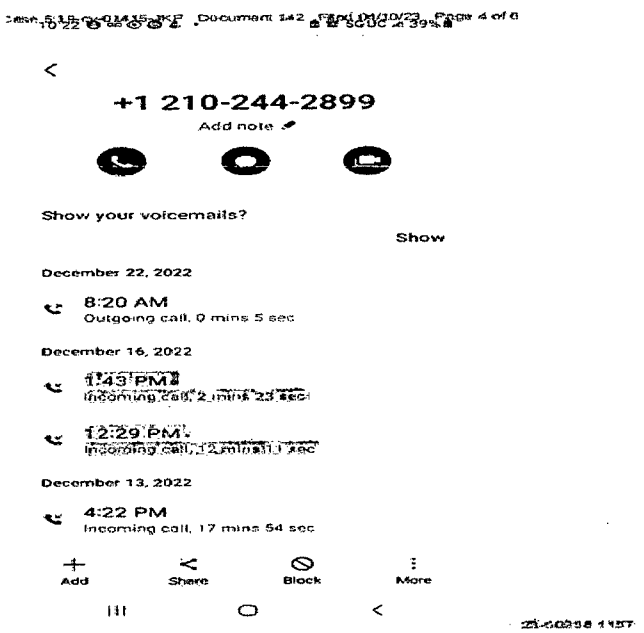
[5] After the judge ex-parte conferecnce with Baptist attorneys regarding their motion of summary judgement below is him and courtroom deputy private call me to respond to Baptist summary judgement motion.



resolve this matter, and I'm seeking your guidance to ensure that all perspectives are taken into consideration.

D. *Baptist lawyers has been working with court officials without me since the matter was in state court. I was served a copy motion to dismiss after it was granted*

I didn't appeal this case in the state court of appeals because the state judge, who used to work with the federal judge in this case, included a document in the record stating that I dismissed the case. I didn't dismiss the case. What happened was that the opposing counsel went directly to the judge's chamber while I was waiting in the courtroom, and they filed a motion to dismiss. The judge granted it, and I was served with the motion the day after the case was dismissed. This process was unfair and unjust. The state court record shows that I dismissed the case, making it seem like a voluntary dismissal. Therefore, the court of appeal may deny my appeal as a manufactured appeal.

E. *Few examples of many, the court rules not apply to lawyers in presiding trial judge's court when one party is pro-se*

A complaint was filed at 5:22-cv-00052 in the San Antonio Federal Courthouse. The summon was served on March 9, 2022, after several attempts. The defendant in the case evaded being served, and the district court clerk set March 30, 2022, as the due date for the Answer. Surprisingly, a year later, on February 7, 2023, the attorney representing a defendant in this case was the exact defense attorney

in my case, 19-cv-635JKP, named David Fritsche. He spoke to Miss Scott, telling her that she could not win her case in Judge Pulliam's court. What surprised me even more was that he mentioned Miss Scott could ask me about it. You can find Mushania Scott's sworn statement in Judicial Misconduct complaint No. 05-24-90003. The next day, Mr. Fritsche filed a motion for a more definite statement without providing any cause. He did not seek permission to file such a late motion. Judge Pulliam granted it and later granted the motion to dismiss as well.

This is the same Mr. Fritsche who sued all my witnesses in state court before filing an Answer to my complaint 19-cv-0635 and made a settlement with them not to stand on the trial date. see **US v. Tison H. Claude jr., Marcelino Echevarria and Scan realty Service, inc.,** 780 F.2d 1567 (11th Cir. 1986)

Upon bringing the matter to the judge, I was yelled at like a child and told to stop. This incident is now being used as a reference to highlight how Judge Pulliam treats parties without lawyers, which is a clear case of unfair treatment.

**Therefore**, I'm not the only one who noticed that the judge referred to be nineteen days from December 16, 2022, as the day he Phoned me and December 19, 2022, the day he ordered me to file a response. This doesn't add up to nineteen days, as claimed by the trial judge. That is 48-72 hour mark

## CONCLUSION

It is crucial that this court intervene now to resolve the issue of a defendant who has already received case material in state court but is requesting irrelevant material for a federal case. This intervention is necessary to correct a potential opening door of completely disregarding Article IV, Section 1.

The petition for a writ of certiorari should be granted.

Respectfully submitted

Symon Mandawala

Post Office box 5512
San Antonio,
Texas 78201

*Pro-se Petitioner*

October 4, 2024

# APPENDIX

23-50258

04-04-2024

Symon Mandawala, Plaintiff-Appellant,

v.

Baptist School of Health Professions, All Counts, Defendant-Appellee.

Appeal from the United States District Court for the Western District of Texas USDC No. 5:19-CV-1415

MEMORANDUM TO COUNSEL OR PARTIES LISTED

The court has denied the motion to extend time to file rehearing in this case.

Sincerely

Lyle W. Cayce, Clerk

23-50258

04-04-2024

Symon Mandawala, Plaintiff-Appellant,

v.

Baptist School of Health Professions, All Counts, Defendant-Appellee.

Appeal from the United States District Court for the Western District of Texas USDC No. 5:19-CV-1415

Before RICHMAN, Chief Judge, and OLDHAM and RAMIREZ, Circuit Judges.

## OPINION

Symon Mandawala appeals the grant of summary judgment in favor of Baptist School of Health Professions (BSHP) on his claims of intentional sex discrimination under Title IX of the Education Amendments of 1972 (Title IX) and breach of contract. He also appeals the denial of his motion for reconsideration of the judgment. We affirm.

I.

Mandawala was enrolled in the medical sonography program at BSHP. After he failed to graduate, he sued BSHP and others asserting arious claims, including sex discrimination under Title IX and breach of contract. He alleges that a

female clinical instructor treated him differently than the female students, gave him negative performance evaluations because of his sex, told him the sonography program was better suited for women, and requested he be transferred to another clinical site in exchange for a female student. He also alleges that BSHP breached its contract with him by failing to provide the necessary equipment and instruction to complete the program and by changing course requirements without notice.

After the district court dismissed all claims except for the breach of contract and sex discrimination claims against BSHP, it entered a scheduling order setting a discovery deadline of November 15, 2022, and a dispostive motion deadline of November 30, 2022. On October 14, 2022, BSHP served Mandawala with interrogatories and requests for production, and it requested that he make himself available for deposition on or before November 15, 2022. Mandawala did not respond to the discovery requests or to the request for his deposition. He also did not serve any discovery requests on BSHP.

On November 29, 2022, Mandawala moved for judgment on the pleadings, and BSHP moved for summary judgment on November 30, 2022. BSHP argued it was entitled to summary judgment because the discovery deadlines had passed, Mandawala had failed to respond to its discovery requests or proffer any discovery requests of his own, and he could not offer evidence to meet his burden of proof on any element of his sex discrimination and breach of contract claims. It so moved for sanctions on Mandawala for his failure to cooperate in discovery and, in the alternative, to

compel, to extend time, and for a continuance. On December 2, 2022, BSHP received Mandawala's interrogatory responses. Seven days later, on December 9, 2022, Mandawala served BSHP with responses to its requests for production. BSHP filed amended motions for summary judgment on December 2 and December 14, 2022, respectively, which noted its receipt of the discovery responses and included them as exhibits. Other than noting and including Mandawala's late discovery responses, both amended motions are substantially the same as the initial motion for summary judgment.

Under the district's local rules, which provide a 14-day deadline for responses to dispostive motions, BSHP's response to Mandawala's motion for judgment on the pleadings was due on December 13, 2022, and his response to BSHP's initial summary judgment motion was due on December 14. *See* W.D. Tex. Loc. R. CV-7(D)(2). After neither party filed a response, the district court's staff separately contacted them to determine the reason for delay. Both parties stated that "they were under the impression that, because [BSHP] amended its motion twice, the deadline to respond was two weeks from the date the last amended motion was filed." Because of this confusion, the district court entered an order on December 16, 2022, extending the deadline to file responsive briefs until December 19, 2022. BSHP responded to the motion for judgment on the pleadings on the same day, and Mandawala responded to the summary judgment motion on December 19, 2022. Mandawala's response did not address the merits

of the summary judgment motion. It instead argued that BSHP had abused the discovery process by requesting information not relevant to his sex discrimination and breach of contract claims and requesting documents it already possessed, and that it had filed untimely responsive pleadings. Mandawala did not rely on any evidence to support his response.

On December 21, 2022, the district court denied Mandawala's motion for judgment on the pleadings and granted in part and denied in part BSHP's summary judgment motion. It found that BSHP had met its summary judgment burden by pointing to the absence of evidence to support the elements of the sex discrimination and breach of contract claims, and that Mandawala had failed to satisfy his burden to demonstrate a genuine dispute of material fact. The district court explained that it had construed the amended motions for summary judgment "as advisories notifying the Court of Mandawala's late filed discovery responses, not as summary judgment evidence," but even if the untimely discovery responses were considered, they did not support the required elements of his claims.

On December 22, 2022, Mandawala filed a motion for reconsideration, and he filed an amended motion on December 27, 2022. He argued that BSHP impeded his ability to gather evidence to support his case by failing to return his telephone call about a discovery matter, he did not have enough time to adequately respond to BSHP's

summary judgment arguments or to include evidence with his response to the motion for summary judgment, and the witnesses he intended to call at trial had information that could have defeated the motion for summary judgment. He attached new evidence to his motion for reconsideration, as well as the subpoenas he had served on his witnesses.

The district court construed Mandawala's motion as a motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) and denied it. It found that Mandawala had ample opportunity and time to collect evidence in discovery, depose witnesses, and prepare an adequate response to the summary judgment motion. It also found that the new evidence was inadmissible for purposes of his Rule 59(e) motion because he failed to request a continuance under Rule 56(d) at the time of summary judgment and he did not show that the evidence was unavailable when he responded to the summary judgment motion. Even if admissible, however, the evidence would not have changed its summary judgment analysis.

## II.

Mandawala first argues that the decision to grant summary judgment was erroneous under Rule 56(d)(1) because the district court knew that both parties had witnesses available to testify at trial, but no testimony from those witnesses was included in the summary judgment record. He also argues that BSHP's summary judgment motion

was filed in bad faith under Rule 56(h) and included false claims about his misconduct in the program. Lastly, he contends that the district court improperly denied his Rule 59(e) motion in light of his new evidence.

## A.

"We review a grant of summary judgment de novo, applying the same standard as the district court." *Haverda v. Hays County*, 723 F.3d 586, 591

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Although not listed in Mandawala's brief, as required by Federal Rule of Appellate Procedure 28(a)(5), the second and third issues are considered because both sides briefed them. *Grant v. Cuellar*, 59 F.3d 523, 525 (5th Cir. 1995) ("This Court has discretion to consider a noncompliant brief, and it has allowed *pro se* plaintiffs to proceed when the plaintiff's noncompliance did not prejudice the opposing party."); *see, e.g.*, *Price v. Digital Equip. Corp.*, 846 F.2d 1026, 1028 (5th Cir. 1988) (finding no prejudice from *pro se* plaintiff's noncompliance with Rule 28 where appellant had fully addressed the issue). Because he failed to address the listed issue concerning the district court's "ex parte" calls, however, Mandawala abandoned it. *See Justiss Oil Co. v. Kerr-McGee Refining Corp.*, 75 F.3d 1057, 1067 (5th Cir. 1996) ("When an appellant fails to advance arguments in the body of its brief in support of an issue it has raised on appeal, we consider such issues abandoned.").

(5th Cir. 2013) (citing *Vaughn v. Woodforest Bank*, 665 F.3d 632, 635 (5th Cir. 2011)). Summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a).

"When a motion for summary judgment identifies an absence of evidence that supports a material fact on which the non-movant bears the burden of proof at trial, the non-moving party must set forth specific facts that show that there is a genuine issue for trial." *Ruiz v. Whirlpool, Inc.*, 12 F.3d 510, 513 (5th Cir. 1994). Rule 56 imposes no obligation for a court "to sift through the record in search of evidence to support a party's opposition to summary judgment." *Adams v. Travelers Indem. Co.*, 465 F.3d 156, 164 (5th Cir. 2006) (quoting *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998)). "When evidence exists in the summary judgment record but the nonmovant fails even to refer to it in the response to the motion for summary judgment, that evidence is not properly before the district court." *Smith ex rel. Estate of Smith v. United States*, 391 F.3d 621, 625 (5th Cir. 2004) (citation omitted).

Mandawala contends that the district court prematurely granted summary judgment for BSHP. At a status conference two months before BSHP moved for summary judgment, both parties told the district court they expected to call approximately 13 witnesses at trial. Citing Rule 56(d), Mandawala argues the district court erred in

granting summary judgment for BSHP without considering testimony from those witnesses. This argument is without merit.

We have long held that "Rule 56 does not require that any discovery take place before summary judgment can be granted; if a party cannot adequately defend such a motion, Rule 56[(d)] is [the] remedy." *Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1285 (5th Cir. 1990). Rule 56(d) provides that if a party "shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition" to the summary judgment motion, a district court may "defer considering the motion or deny it," "allow time to obtain affidavits or declarations or to take discovery," or "issue any other appropriate order." FED. R. CIV. P. 56(d). "Motions made under Rule 56(d) are broadly favored and should be liberally granted," but the party opposing summary judgment "may not simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts." *Renfroe v. Parker*, 974 F.3d 594, 600-01 (5th Cir. 2020) (quoting *Am. Fam. Life Assurance Co. of Columbus v. Biles*, 714 F.3d 887, 894 (5th Cir. 2013)) (internal quotations omitted). At a minimum, the party "must indicate to the court by some statement, preferably in writing[,] . . . why he needs additional discovery and how the additional discovery will create a genuine issue of material fact." *Krim v. BancTexas Grp., Inc.*, 989 F.2d 1435, 1442 (5th Cir. 1993)

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Rule 56(f) was recodified as Rule 56(d) following the 2010 amendments. *See* FED. R. CIV. P.

(emphasis omitted). The movant "must also have diligently pursued discovery." *Jacked Up, L.L.C. v. Sara Lee Corp.*, 854 F.3d 797, 816 (5th Cir. 2017) (quotations and citation omitted). "We review a district court's denial of a Rule 56(d) motion for abuse of discretion." *Biles*, 714 F.3d at 894. Here, Mandawala did not file a Rule 56(d) motion or its functional equivalent following BSHP's motion for 56(d) advisory committee's note to 2010 amendment. summary judgment. "[O]ur court has foreclosed a party's contention on appeal that it had inadequate time to marshal evidence to defend against summary judgment when the party did not seek Rule 56([d]) relief before the summary judgment ruling." *Fanning v. Metro. Transit Auth. of Harris County*, 141 Fed.Appx. 311, 314-15 (5th Cir. 2005); *see Potter v. Delta Air Lines, Inc.*, 98 F.3d 881, 887 (5th Cir. 1996) (holding that party was "foreclosed from arguing that she did not have adequate time for discovery" because she did not move for a continuance). Although Mandawala asserts that he named witnesses in his initial disclosures and served witness subpoenas, he failed to file a Rule 56(d) motion, request a continuance, or state that he needed additional discovery before the district court ruled on summary judgment. He has forfeited his argument that the district court prematurely granted summary judgment. *See United States v. Zuniga*, 860 F.3d 276, 284 n.9 (5th Cir. 2017) ("Failure to raise a claim to the district court 'constitutes a forfeiture, not a waiver, of that right for the purposes of appeal.'") (quoting *United States*

*v. Chavez-Valencia*, 116 F.3d 127, 130 (5th Cir. 1997)).

**B.**

Citing Rule 56(h), Mandawala contends that BSHP's motion for summary judgment was filed in bad faith. Under Rule 56(h), if a court determines that an affidavit or declaration filed with summary judgment "is submitted in bad faith," it "may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result." FED. R. CIV. P. 56(h). "An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions." *Id.* We review the district court's decision whether to grant a remedy under Rule 56(h) for an abuse of discretion. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 349 (5th Cir. 2007). Here, Mandawala does not claim that he raised the issue of BSHP's bad faith in the district court or that he made any request to the district court for a remedy under Rule 56(h). He also fails to explain how the district court erred or abused its discretion. "A party forfeits an argument by failing to raise it in the first instance in the district court-thus raising it for the first time on appeal-or by failing to adequately brief the argument on appeal." *Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021); *see* FED. R. APP. P. 28(a)(8)(A)

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The rule on submitting an affidavit or declaration in bad faith in Rule 56(g) was recodified as Rule 56(h) following the 2010 amendments. *See* FED. R. CIV. P. 56(h) advisory committee's note to 2010 amendment.

(requiring appellant's argument to contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which appellant relies"). "Although we liberally construe briefs of *pro se* litigants and apply less stringent standards to parties proceeding *pro se* than to parties represented by counsel, *pro se* parties must still brief the issues and reasonably comply with the standards of Rule 28." *Cuellar*, 59 F.3d at 524 (footnote omitted). Consequently, Mandawala has forfeited this issue.

**C.**

Mandawala appeals the district court's denial of his motion for reconsideration under Rule 59(e). "When a district court is presented with new evidence in a Rule 59(e) motion to alter or amend, and the court denies the motion, the standard of review depends on whether the district court considered the new evidence in reaching its decision." *Grant v. Harris County*, 794 Fed.Appx. 352, 358 (5th Cir. 2019) (unpublished) (citing *Templet v. Hydro-Chem Inc.*, 367 F.3d 473, 477 (5th Cir. 2004)). "If the materials were considered . . . and the district court still grants summary judgment, the appropriate appellate standard of review is de novo." *Catalyst Strategic Advisors, L.L.C. v. Three Diamond Cap. Sbc, L.L.C.*, 93 F.4th 870 (5th Cir. 2024) (quoting *Templet*,

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Even assuming Mandawala could make the argument on appeal, he has not identified any affidavit or declaration that BSHP submitted in bad faith. *See* FED. R. CIV. P. 56(h)

367 F.3d at 477). "However, if the district court does not consider the evidence, the appropriate standard of review is abuse of discretion." *Luig v. N. Bay Enterprises, Inc.*, 817 F.3d 901, 905-06 (5th Cir. 2016) (citing *Templet*, 367 F.3d at 477). "[I]f it is unclear whether the district court considered the new evidence, the court reviews the district court's denial of the Rule 59(e) motion for an abuse of discretion." *Grant*, 794 Fed.Appx. at 358 (citing *Luig*, 817 F.3d at 905). "Under this standard of review, the district court's decision and decision-making process need only be reasonable." *Templet*, 367 F.3d at 477.

Here, the district court found that Mandawala's evidence in support of his motion for reconsideration was "neither admissible at this late stage, nor relevant to its summary judgment analysis" and it denied the motion. The denial of the Rule 59(e) motion is reviewed for abuse of discretion. *See Grant*, 794 Fed.Appx. at 358 (explaining that the abuse of discretion applies if it is not clear whether the district court considered the new evidence in its Rule 59(e) decision).

Rule 59(e) "is an extraordinary remedy that should be used sparingly." *Templet*, 367 F.3d at 479. "[A] motion to alter or amend the judgment under Rule 59(e) must clearly establish either a manifest error of law or fact or must present newly discovered evidence and cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-64 (5th Cir. 2003) (quoting *Simon v. United*

*States*, 891 F.2d 1154, 1159 (5th Cir. 1990)) (internal quotations omitted). "Under Rule 59(e), amending a judgment is appropriate (1) where there has been an intervening change in the controlling law; (2) where the movant presents newly discovered evidence that was previously unavailable; or (3) to correct a manifest error of law or fact." *Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 (5th Cir. 2012).

Mandawala's Rule 59(e) motion asked the district court to consider new evidence that was not presented in his response to the motion for summary judgment. He claimed he was given only 48 hours to respond to the motion and did not have enough time to get exhibits filed because he relied on public facilities to print documents. The district court denied the motion. It found that Mandawala had ample time to prepare an adequate response, explaining that after the 14-day deadline for responding to the motion had passed, it extended the response deadline, giving him "19 days to respond, not 48 hours." The district court also found that he did not move for a continuance under Rule 56(d) or request additional time to adequately oppose summary judgment prior to the ruling on the summary judgment motion, and he failed to show that the evidence was unavailable to him when he responded to the motion.

On appeal, Mandawala relies on the same evidence he attached to his Rule 59(e) motion, but he offers no basis for finding that the denial of the motion

was unreasonable and an abuse of discretion. "We have held that an unexcused failure to present evidence available at the time of summary judgment provides a valid basis for denying a subsequent motion for reconsideration." *Templet*, 367 F.3d at 479 (citing *Russ v. Int'l Paper Co.*, 943 F.2d 589, 593 (5th Cir. 1991)). The district court did not abuse its discretion in denying Mandawala's Rule 59(e) motion.

AFFIRMED.

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

SA-19-CV-01415-JKP

03-14-2023

SYMON MANDAWALA, Plaintiff,

v.

BAPTIST SCHOOL OF HEALTH PROFESSIONS; Defendant.

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JASON PULLIAM, UNITED STATES DISTRICT JUDGE.

**MEMORANDUM OPINION AND ORDER**

In a Memorandum Opinion and Order entered December 21, 2022, the Court granted in part Defendant Baptist School of Health Professions' Motion for Summary Judgment and dismissed Plaintiff Symon Mandawala's case. ECF No. 133. Now before the Court is Mandawala's Motion for Reconsideration and Amended Motion for Reconsideration. ECF Nos. 135, 136. Defendant Baptist School of Health Professions filed a Response and Mandawala filed a Reply to Defendant's Response. ECF Nos. 139, 140. The Court finds Mandawala's first Motion (ECF No. 135) is **MOOTED** by his Amended Motion and, based on review of the record, the parties' briefings, and the applicable law, the

Court **DENIES** Mandawala's Amended Motion (ECF No. 136).

## BACKGROUND

This case arises from a dispute between Mandawala, who appears *pro se*, and the school where he attended a medical sonography program, Baptist School of Health Professions. Mandawala alleges he failed the program, in part, because of sex discrimination.

Specifically, he claims a female supervisor at Northeast Baptist Hospital was biased against him because he is a man. As evidence of her bias, Mandawala says the supervisor treated him differently than his female peers, gave him negative performance evaluations, and made comments about sonography being a field better suited to women. Mandawala further alleges the school breached its contract with him by failing to provide him with the opportunity to complete graduation requirements and switching course requirements without notice.

On September 3, 2020, this Court issued a Memorandum Opinion and Order allowing Mandawala's sex discrimination and breach of contract claims to proceed and dismissing his other claims. ECF No. 34. The Court also dismissed all defendants except Baptist School of Health Professions. Mandawala then filed multiple appeals with the Fifth Circuit, all of which the Fifth Circuit denied. ECF Nos. 47, 57, 65, 68, 73,

87, 92, 102. The parties participated in mediation and did not settle, so the Court referred the case to U.S. Magistrate Judge Elizabeth S. Chestney for pretrial matters. ECF No. 114. After discovery deadlines passed, the parties presented the Court with two dispositive motions: Mandawala's motion for judgment on the pleadings and the school's motion for summary judgment and other relief. ECF Nos. 124, 125. The Court denied Mandawala's motion, granted the school's motion in part, and dismissed the case. ECF Nos. 133, 134. Mandawala then filed the Motion for Reconsideration and Amended Motion for Reconsideration that are presently before the Court. ECF Nos. 135, 136. The Court construes Mandawala's motions as Motions to Alter or Amend Judgment (Reconsideration) pursuant to Federal Rule of Civil Procedure 59(e).

## LEGAL STANDARD

Under Federal Rule of Civil Procedure 59(e), litigants may move to alter or amend a judgment within twenty-eight days of the entry of Final Judgment. *Banister v. Davis*, 140 S.Ct. 1698, 1703 (2020). Federal Rule 59(e) provides courts with an opportunity to remedy their "own mistakes in the period immediately following" their decisions. *See id.* (quoting *White v. N.H. Dep't of Emp. Sec.*, 455 U.S. 445, 450 (1982)). Given its corrective function, courts generally use Federal Rule 59(e) "only to reconsider matters properly encompassed in a decision on the merits." *Banister*, 140 S.Ct. at 1703. A Federal Rule 59(e) motion "must clearly establish either a manifest error of law or fact or must

present newly discovered evidence." *T. B. ex rel. Bell v. NW. Indep. Sch. Dist.*, 980 F.3d 1047, 1051 (5th Cir. 2020) (quoting *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-64 (5th Cir. 2003)). While "courts may consider new arguments based on an 'intervening change in controlling law' and 'newly discovered or previously unavailable evidence,'" courts "will not address new arguments or evidence that the moving party could have raised before the decision issued." *White v. N.H. Dep't of Emp. Sec.*, 455 U.S. at 450 n. 2.

A motion for reconsideration "calls into question the correctness of a judgment." *Templet v. Hydro Chem, Inc.*, 367 F.3d 473, 478 (5th Cir. 2004) (citation omitted). A motion for reconsideration "is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Id.* Instead, it merely serves to allow "a party to correct manifest errors of law or fact or to present newly discovered evidence." *Id.* Given this narrow purpose, courts sparingly use the extraordinary remedy. *Def. Distributed v. U.S. Dep't of State*, 947 F.3d 870, 873 (5th Cir. 2020). Courts, nevertheless, have considerable discretion in deciding whether to reopen a case under Federal Rule 59(e). *Id.* (quoting *Edward H. Bohlin Co. v. The Banning Co.*, 6 F.3d 350, 355 (5th Cir. 1993)).

## ANALYSIS

In his Motion for Reconsideration, Mandawala offers four reasons why the Court should reconsider its decision to grant summary judgment

in favor the Defendant. Specifically, (1) he suggests his failure to gather evidence in support of his case is a result of Defendant's failure to return his telephone calls; (2) he argues he was not given enough time to respond to Defendant's motion for summary judgment; (3) he offers new evidence he suggests would overcome Defendant's motion for summary judgment; and (4) he believes subpoenas he served in anticipation of trial would lead to testimony that would defeat Defendant's summary judgment motion. Each of these reasons is discussed below.

**I. Mandawala's Communication with Defendant**

Mandawala suggests he was unable to effectively conduct discovery in this case because telephone calls he made to Defense counsel went unanswered. Contrary to Mandawala's characterization of events, however, the record shows it was Mandawala who failed to participate in discovery. *See* ECF No. 125. Defendant concedes Mandawala called Defense counsel and counsel did not answer. Yet Mandawala had ample opportunity to collect evidence in discovery and failed to do so. Specifically, he failed to respond to any of Defendant's discovery requests until after the discovery deadline had passed. Indeed, Mandawala only responded after Defendant filed its dispositive motion requesting that the Court sanction Mandawala for his failure to cooperate with discovery. Furthermore, Mandawala did not file any discovery requests of his own by the

discovery deadline. Defense counsel's failure to answer telephone calls does not excuse Mandawala's failure to participate in discovery. The Court, therefore, finds any deficiency in the evidence is a result of Mandawala's own neglect.

**II. Mandawala's Opportunity to Respond**

Mandawala references a conversation he had with the Court's courtroom deputy regarding his deadline to respond to Defendant's Motion for Summary Judgment. Specifically, he says he was given only 48 hours to respond. This characterization is inaccurate. In fact, when Mandawala spoke with the courtroom deputy, his deadline to respond had already passed. Because the parties were confused about the deadline, the Court granted an extension. *See* ECF No. 128. All told, Mandawala had 19 days to respond, not 48 hours. That is more time than is required under the Federal Rules and ample time to prepare an adequate response.

**III. Mandawala's New Evidence**

Mandawala relies on Federal Rule 56(d) to support his request that the Court consider new evidence he failed to provide in his response to Defendant's motion for summary judgment. Rule 56(d) allows a court to defer consideration of a motion for summary judgment when a nonmovant shows "it cannot present facts essential to justify its opposition." A Rule 56(d) motion is properly offered before a court's ruling on a motion for summary judgment, not after, as is the case here. Moreover,

Mandawala fails to show the newly offered evidence was unavailable to him when he responded to Defendant's motion. Finally, even if it were admissible, the evidence Mandawala offers would not have changed the Court's analysis.

Mandawala cites to documents describing why he was removed from a clinical site. One document says he was removed because of staffing issues, another says he was removed for unprofessional conduct. Mandawala says the school did not cite to the document about staffing issues because it conflicts with its narrative about his unprofessional conduct. This ignores, however, the possibility that he was removed because of staffing issues and unprofessional conduct. In any event, it does not affect the Court's conclusion that the school has offered a legitimate reason for why Mandawala failed the program-he did not complete his course requirements-and Mandawala offers no evidence this reason is a mere pretext for sex discrimination. This new evidence, therefore, does not affect the Court's analysis.

Mandawala further cites evidence of two interactions with his supervisors, both of which the Court was already aware. In one instance, he suggests a supervisor inappropriately reported his failure to perform an elective scan in retaliation for him forgetting to tell her about a telephone call from her child's school. Regardless of whether Mandawala's characterization of events is true, the Court finds no reason why this incident is relevant to his either breach of contract or sex discrimination claim. In another instance,

Mandawala says a supervisor inappropriately accepted patient complaints about him, and asked that another student, who is female, replace him. Mandawala suggests the supervisor sought to replace him because he is a man, ignoring his own role in engaging in behavior that caused patients to complain about him. Like the evidence regarding his removal, evidence regarding Mandawala's conflicts with supervisors does not affect the Court's analysis of Defendant's summary judgment motion.

The Court, therefore, finds new evidence proffered by Mandawala is neither admissible at this late stage, nor relevant to its summary judgment analysis.

## IV. **Effect of Subpoenas**

Mandawala further offers copies of subpoenas he served on witnesses he intended to call at trial, suggesting the testimony of these witnesses would have provided evidence to overcome Defendant's summary judgment motion. Mandawala could have deposed these witnesses in discovery but chose not to do so. Here again, the Court will not reward Mandawala's failure to participate in discovery by allowing him to gather evidence after the case has been dismissed. When considering a motion for reconsideration, courts "will not address new arguments or evidence that the moving party could have raised before the decision issued." *White v. N.H. Dep't of Emp. Sec.*, 455 U.S. at 450 n. 2. Accordingly, Mandawala's request for

reconsideration is denied.

**IT IS THEREFORE ORDERED** that Mandawala's Motion for Reconsideration is

**MOOTED** by his amended motion. ECF No. 135.

**IT IS FURTHER ORDERED** that Mandawala's Amended Motion for Reconsideration is **DENIED**. ECF No. 136.

It is so ORDERED.