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United States District Court,
N.D. Illinois, Eastern Division.

John MCGEE and Thomas Malone, Plaintiffs,
v.
ILLINOIS DEPARTMENT OF TRANSPORTATION, Kenneth Chlebicki, Dennis Mahoney, and John Kos, Defendants.

No. 02 C 0277. | April 15, 2004.

Attorneys and Law Firms

Michael M. Mulder, Jamie S. Franklin, Meites, Mulder, Burger & Mollica, Chicago, IL, for Plaintiffs.

Arundathi P. Rao, Meghan O'Donnell Maine , Illinois Attorney General's Office, Chicago, IL, for Defendants.

Opinion

MEMORANDUM OPINION AND ORDER

SCHENKIER, Magistrate J.

***1** The plaintiffs, John McGee and Thomas Malone, have filed a motion to reconsider the entry of summary judgment by this Court in favor of defendant, John Kos. Although the motion does not specify the rule under which the motion has been made, we assume it is filed pursuant to Federal Rule of Civil Procedure ("Rule") 59(e), which requires such a motion to be made within 10 days after entry of the judgment. Although this motion satisfies that procedural standard, it fails to satisfy the substantive standards of Rule 59(e) and is therefore denied.

Whether to grant a motion to reconsider is a matter committed to the sound discretion of the District Court. *Caisse Nationale de Credit v. CBI Industries, Inc.,* 90 F.3d 1264, 1270 (7th Cir.1996). In determining whether to exercise its discretion to grant reconsideration, the Court starts with the proposition that such motions "serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." *Publishers Resource, Inc. v. Walker-David Publications, Inc.,* 762 F.2d 557, 561 (7th Cir.1985)(quoting *Keene Corp. v. International Fidelity Insurance Company,* 561 F.Supp. 656, 665-66 (N.D.Ill.1982)). A motion to reconsider should only be presented when the law or facts change significantly after the issue is presented to the Court, or the Court has "patently misunderstood a party," "made a decision outside the adversarial issues presented" to it, or has "made an error not of reasoning but of apprehension." *Bank of Waunakee v. Rochester Cheese Sales, Inc.,* 906 F.2d 1185, 1191 (7th Cir.1990). Thus, a motion to reconsider is not a vehicle by which a party may seek "to undo its own procedural failures [or] to introduce new evidence or advance arguments that could have and should have been presented to the District Court prior to the judgment." *Moro v. Shell Oil Company,* 91 F.3d 872, 876 (7th Cir.1996) (citation omitted); *see also Publishers Resource, Inc.,* 762 F.2d at 561. Nor is a motion to reconsider "at the disposal of parties who want to 'rehash' old arguments," that previously were made and rejected. *Young v. Murphy,* 161 F.R.D. 61, 62 (N.D.Ill.1995). After careful review, the Court finds that plaintiffs' motion to reconsider fails to meet the standards of Rule 59(e).

In their summary judgment papers, the plaintiffs made the same argument advanced in the present motion, namely that Mr. Kos was specifically aware of plaintiffs' *Massie* complaints, because the record showed that Mr. Kos received and/or knew about *"all* complaints under the *Massie* decree that were received by IDOT" (Motion at ¶ 3; Pls.' Suppl. Mem. Opposing Mot. for Sum. Judg., at 6-7). This argument is an attempt to rehash an old argument previously made and rejected. We do not view that evidence as creating a triable issue on whether Mr. Kos was specifically aware of the plaintiffs' particular claims made in this case, and intentionally failed to act with respect to those claims. Such personal participation was required to hold Mr. Kos liable in this case under 42 U.S.C. §§ 1981 and 1983. The Court explained that finding in its ruling on the motion for

summary judgment. *See* McGee v. IDOT, No. 02 C 0277, 2004 WL 726110, *2 (N.D.Ill.2004) (general notice about *Massie* complaints not sufficient to create triable issue on issue of whether Mr. Kos "directly engaged in the acts of discrimination and retaliation" that were subject of plaintiffs' claims; and, general notice not sufficient to impose personal fault and thus liability on him for "failing to act to remedy alleged discrimination").

CONCLUSION

***2** IT IS THEREFORE ORDERED that plaintiffs' motion for reconsideration (doc. # 61) be denied.