

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

BRENDA DAVIS

PLAINTIFF

v.

CASE NO. 4:11CV00506 BSM

**SIMON PROPERTY GROUP, INC. d/b/a
MCCAIN MALL, et al.**

DEFENDANTS

ORDER

Plaintiff's motion for reconsideration [Doc. No. 21] of the order granting defendants' motion for summary judgment [Doc. No. 19] is granted.

Plaintiff filed suit against defendants in state court on March 9, 2009, and the case was removed and assigned case number 4:09-cv-00242. Defendants moved for summary judgment on May 27, 2010, and on June 10, 2010, plaintiff requested a voluntary non-suit, to which defendants objected. The request for non-suit was granted on June 22, 2010, in an order providing that in the event plaintiff re-filed the case, she would have five days in which to respond to defendants' pending motions for summary judgment.

Plaintiff re-filed on June 22, 2011, [Doc. No. 1]. Defendants Simon Property Group, Inc. [Doc. No. 13] and IPC International Corporation [Doc. No. 16] moved to dismiss on July 19, 2011, asserting that plaintiff failed to respond to the motions for summary judgment within five days of re-filing as required by the non-suit order. Those motions were granted and the case was dismissed on July 20, 2011 [Doc. No. 19].

Plaintiff seeks reconsideration [Doc. No. 21], essentially asserting that her lawyer failed to recognize that the June 22, 2010, non-suit order required plaintiff to respond to the

motions for summary judgment pending at the time of the non-suit. Indeed, plaintiff seems to argue that her counsel understood that defendants would have to re-file their motions for summary judgment and that plaintiff would then be given five days in which to respond. *See* plaintiff's motion to reconsider summary judgment, [Doc. No. 21] at ¶¶ 2-3; brief in support of plaintiff's motion for reconsideration, [Doc. No. 22] at 1.

The June 22, 2010, non-suit order clearly required plaintiff to respond to the motions for summary judgment pending at the time the order was entered within five days of re-filing her complaint. Further, it is clear that plaintiff failed to do so. That being the case, in determining whether to reconsider the summary judgment order, the analysis should not stop there. This is true because courts have fairly broad discretion in deciding whether motions for reconsideration should be granted.

Looking closely at the facts herein, it seems fairly clear that plaintiff's failure to comply with the non-suit order was unintentional. Indeed, it is very clear that it was due to counsel's error. It also seems pretty clear that plaintiff's failure to respond to defendants' motions for summary judgment within five days of re-filing did not prejudice defendants. Moreover, plaintiff submitted her response to the motions for summary judgment on July 26, 2011 [Doc. Nos. 22, 23, 24] when she filed her motion for reconsideration.

Therefore, plaintiff's motion for reconsideration [Doc. No. 21] is granted and the order granting summary judgment [Doc. No. 19] and the judgment [Doc. No. 20] entered herein on July 25, 2011, are vacated. Defendants' motions for summary judgment will now be taken up and decided based on their merits. Further, counsel for the parties are instructed

to communicate and to then contact Betty Tyree at 501-604-5400 and provide her with dates that counsel are available to conduct a scheduling conference regarding the setting of a trial date and all necessary deadlines.

IT IS SO ORDERED this 21st day of March 2012.


UNITED STATES DISTRICT JUDGE