

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HARRISON DIVISION

SCOTT BRADEN, as parent and next friend of M

PLAINTIFF

v.

Case No. 3:10-CV-03118

MOUNTAIN HOME SCHOOL DISTRICT; CHARLES SCRIBER, individually and in his official capacity as Superintendent; DEBBIE ATKINSON, individually and as Director of Special Education; MICHELLE MCWILLIAMS, individually and in her official capacity as Principal of Pinkston Middle School; LINDA WHITE, individually and as Vice Principal of Pinkston Middle School; and CASSIE FOWLER, individually and in her official capacity as Teacher of the Alternative Learning Education Classroom

DEFENDANTS

ORDER

Defendants Mountain Home School District, Charles Scriber, Debbie Atkinson, Michelle McWilliams, Linda White, and Cassie Fowler's Amended Second Motion for Summary Judgment (Doc. 52) is now before the Court for disposition. Before the Court makes a decision with regard to this Motion, it is appropriate to set forth a brief procedural history of the case.

Several months ago, on October 18, 2012, the Court granted in part and denied in part Defendants' first Motion for Summary Judgment (Doc. 15), preserving a number of issues for trial. Following this ruling, the Court granted Plaintiff's Motion to Continue the trial date to April 2, 2013, for the express purpose of allowing sufficient time for Plaintiff's new counsel to familiarize himself with the case and conduct discovery if needed. The Court then issued a Second Amended Final Scheduling Order (Doc. 37) and extended the discovery and dispositive motions deadlines commensurate with the new trial date.

On January 31, 2013, Defendants submitted their Second Motion for Summary Judgment.

(Doc. 47). Thereafter, Defendants sought leave to amend their Motion, which the Court granted. On February 6, 2013, Defendants filed an Amended Second Motion for Summary Judgment (Doc. 52), and Plaintiff responded by filing a Motion to Strike. (Doc. 55).

After considering Defendants' Amended Second Motion for Summary Judgment, the Court finds that Defendants have failed to establish both the absence of a genuine dispute of material fact and that they are entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). Specifically, Defendants' Amended Second Motion for Summary Judgment presents no material new evidence or legal arguments that the Court did not already consider in ruling on Defendants' first Motion for Summary Judgment. It appears that Defendants submitted a Second Motion for Summary Judgment in order to revisit virtually the same legal and factual issues presented in their first Motion. Defendants do not claim that any new discovery took place between the time their first Motion for Summary Judgment was filed and their Second Motion for Summary Judgment was filed. Plaintiff also confirms in its Motion to Strike that "Defendants have conducted no discovery in this matter since its inception." *See* Doc. 56, p. 3.

Even if the Court were to construe Defendants' Amended Second Motion for Summary Judgment as a motion to reconsider the Court's October 18, 2012 Order, it is clear that Defendants have not made a showing sufficient to satisfy Federal Rule of Civil Procedure 60(b). According to Rule 60(b), a party may be relieved from the effects of a final order if there is evidence of (1) mistake, inadvertence, surprise, or excusable neglect; or (2) newly discovered evidence. Here, no legal error was made by the Court in issuing its October 18, 2012 Order granting in part and denying in part Defendants' first Motion for Summary Judgment. In addition, Defendants have failed to present newly discovered evidence to the Court or make new legal arguments to support their claims.

Accordingly, for the reasons set forth above, Defendants' Amended Second Motion for Summary Judgment (Doc. 52) is DENIED. Plaintiff's Motion to Strike (Doc. 55) Defendants' second Motion for Summary Judgment is DENIED AS MOOT. This case remains set for jury trial to begin at 9:00 a.m. on April 2, 2013, in Fort Smith.

IT IS SO ORDERED this 12th day of February, 2013.

/s/ P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE