

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 10-cv-00023-LTB-KMT

VINCENT E. WELLS,

Plaintiff,

v.

STEPHEN R. KREBS, M.D., Medical Director, Physician health Partners,
JOSEPH FORTUNATO, M.D., Sterling Correctional Facility,
BARRY GOLDSMITH, M.D., Sterling Correctional Facility,
PAULA FRANZ, M.D., Medical Director, Colorado Department of Corrections,
JO ANNE STOCK, P.C., Sterling Correctional Facility,
BEVERLY DOWIS, Health Service Administrator, and
CHERYL SMITH, Clinical Chief of Operations, Colorado Department of Corrections,

Defendants.

ORDER

This matter is before the court on Plaintiff's "Response to Minute Order Issued by Kathleen M. Tafoya and Request for Review of Order" (Doc. No. 86, filed August 13, 2010).

Defendants filed their Response on August 16, 2010. (Doc. No. 90.)

Plaintiff's request for review of order is construed by this court as a motion for reconsideration of this court's Minute Order denying "Plaintiff's Motion Requesting the Court to Postpone Defendants' Summary Judgment Until Discovery Has Been Completed" (Doc. No. 70) filed on August 3, 2010. (Doc. No. 83.) A litigant subject to an adverse judgment, and who seeks reconsideration by the court of that adverse judgment, may "file either a motion to alter or

amend the judgment pursuant to Fed. R. Civ. P. 59(e) or a motion seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b).” *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991). Plaintiff’s request for review of the order was filed August 13, 2010.

Therefore, as the motion was filed within ten days after the order was entered in this action, the court will consider the request for review pursuant to Rule 59(e). *See Van Skiver*, 952 F.2d at 1243.

The three major grounds that justify reconsideration are: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. *See Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Plaintiff’s does not present any evidence or argument that there has been a change in the controlling law or identify a specific error in the court’s prior ruling.

In its Minute Order, this court denied Plaintiff’s motion to postpone ruling on Defendants’ Motion for Summary Judgment because “Plaintiff did not file a Rule 56(f) affidavit, nor has Plaintiff given any information as to probable facts not available, what steps have been taken to obtain these facts, or how additional time will enable Plaintiff to rebut Defendants’ allegations of no genuine issue of material fact.” (Doc. No. 70.) Plaintiff concedes that he did not file a Rule 56(f) affidavit, but states that he wishes to present to the court “medical records from Sterling Regional Medical Center for emergency care on June 27, 28 and 29, 2010, that states [sic] the Plaintiff’s medical care needs and the incompetency of Defendant(s) Stock, Fortunato, Dowis, and Goldsmith.” (Doc. No. 86 at 2, ¶ 8.)

Plaintiff's Amended Complaint contains allegations of improper medical care by Defendants from his incarceration at Sterling Correctional Facility on December 17, 2007, through February 18, 2010. (*See* Doc. No. 14.) Plaintiff has not amended his complaint to make further allegations of inadequate medical care. Moreover, on September 1, 2010, this court issued its Recommendation that Defendants' Motion for Summary Judgment be granted and that this case be dismissed in its entirety.

This court finds that Plaintiff has not demonstrated an entitlement to relief under Rule 59(e). Therefore, it is

ORDERED that "Response to Minute Order Issued by Kathleen M. Tafoya and Request for Review of Order" (Doc. No. 86) is **DENIED**.

Dated this 1st day of September, 2010.

BY THE COURT:



Kathleen M Tafoya
United States Magistrate Judge