

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01782-ZLW

JOSEPH JON DREISMEIER,

Plaintiff,

v.

ARISTEDES W. ZAVARAS (Executive Director C.D.O.C.),
KEVIN MILYARD (Warden SCF),
DARREN COE (Psych Doctor CSP),
MRS. ROBINSON (Psych Doctor SCF),
DR. FORTUNATO (Medical Doctor SCF), and
BILL RITTER, JR., Governor of Colorado,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

NOV 09 2010

GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTION TO RECONSIDER

Plaintiff, Joseph Jon Dreismeier, filed *pro se* on September 28, 2010, a motion to reconsider the dismissal of the instant action, styled as a "Petition for Rehearing." The Court must construe Mr. Dreismeier's filings liberally because he is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). For the reasons stated below, the motion to reconsider will be denied.

A litigant subject to an adverse judgment, and who seeks reconsideration by the district 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). A motion to alter or amend the judgment must be filed within twenty-

eight days after the judgment is entered. **See** Fed. R. Civ. P. 59(e). The Court will consider Mr. Dreismeier's motion to reconsider pursuant to Rule 59(e) because it was filed within twenty-eight days after the judgment was entered in this action on September 3, 2010. **See *Van Skiver***, 952 F.2d at 1243 (stating that motion to reconsider filed within ten-day limit for filing a Rule 59(e) motion under prior version of that rule should be construed as a Rule 59(e) motion).

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).

On September 3, the Court dismissed the complaint and the action without prejudice pursuant to Fed. R. Civ. P. 41(b) for Plaintiff's failure to file an amended complaint within the time allowed that complied with the pleading requirements of Fed. R. Civ. P. 8. The September 3 dismissal order discusses in detail the reasons for the dismissal. Upon consideration of the motion to reconsider and the entire file, the Court finds that Mr. Dreismeier fails to demonstrate some reason why the Court should reconsider and vacate the order to dismiss this action. Mr. Dreismeier fails to demonstrate the existence of an intervening change in controlling law or new evidence and he fails to convince the Court of any need to correct clear error or prevent manifest injustice. Therefore, the motion to reconsider will be denied.

Accordingly, it is

ORDERED that the motion to reconsider that Plaintiff, Joseph Jon Dreismeier, Jr., filed *pro se* on September 28, 2010, and which the Court has treated as a motion to

alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), is denied.

DATED at Denver, Colorado, this 8th day of November, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge, for
ZITA LEESON WEINSHIENK
Senior Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-01782-ZLW

Joseph Jon Dreismeier
Prisoner No. 115975
Limon Correctional Facility
49030 State Hwy. 71
Limon, CO 80826

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 11/9/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk