

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Lewis T. Babcock, Judge

Civil Action No. 12-cv-00172-LTB-KLM

TROY R. ARRINGTON, II,

Plaintiff,

v.

TIMOTHY R. CHAVEZ,

Defendant.

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ORDER

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This case is before me on Plaintiff's Motion for Reconsideration [Doc # 38]. After consideration of the motion, all related pleadings, and the case file, I deny Plaintiff's motion.

By Order dated October 16, 2012, I denied Plaintiff's Motion for Leave To Amend Complaint to Add Claim for Exemplary Damages on the basis that there was insufficient evidence that Defendant engaged in outrageous or willful and wanton conduct in connection with the automobile accident at issue in this case. *See* Doc # 34. To overcome this conclusion, Plaintiff now presents evidence purportedly showing that Defendant may have been using a non-hands-free cell phone to check his voicemail messages at or around the time of the accident. Even assuming that this was the case despite significant flaws in Plaintiff's argument, Defendant's use of a cell phone as alleged does not demonstrate the requisite outrageous or wanton and willful conduct to support a claim for punitive damages against him.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Reconsideration [Doc # 38] is  
DENIED.

Dated: November 29, 2012 in Denver, Colorado.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, JUDGE