

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF ILLINOIS
 PEORIA DIVISION**

ALAN BEAMAN,)
)
 Plaintiff,)
)
 v.)
)
 JAMES SOUK, CHARLES REYNARD,)
 TIM FREESMEYER, ROB)
 HOSPELHORN, DAVE WARNER, JOHN)
 BROWN, FRANK ZAYAS, MCLEAN)
 COUNTY ILLINOIS, and TOWN OF)
 NORMAL ILLINOIS,)
)
 Defendants.)

Case No. 10-cv-1019

ORDER & OPINION

This matter is before the Court on Defendants’ Objection to Plaintiff’s Designation of Filings for Record on Appeal (Doc. 143), construed by the Court as a motion to correct or strike matters from the appellate record pursuant to Federal Rule of Appellate Procedure 10(e). Plaintiff has filed a Response (Doc. 144). Pursuant to Circuit Rule 10(b), this Court will resolve the dispute.

Plaintiff filed a Notice of Appeal on January 29, 2014 (Doc. 138), after the Court granted summary judgment to the remaining defendants and entered final judgment in Plaintiff’s case. On February 4, 2014, Plaintiff filed a Designation of Filings for Record on Appeal (Doc. 142), requesting the inclusion of certain filings in the event they would otherwise not be included in the record on appeal absent a request or court order pursuant to Circuit Rule 10(a). This designation included docket entries 99 through 108, filed on July 31, 2013. These filings are exhibits that

were filed by Defendants John Brown and McLean County, Illinois, in support of their motion for summary judgment.

Defendants Tim Freesmeyer, Dave Warner, Frank Zayas, and the Town of Normal, Illinois (collectively, “Normal Defendants”), now object to the inclusion of these exhibits on the record for appeal because Defendants John Brown and McLean County, Illinois, were voluntarily dismissed from the case before a ruling on their motion for summary judgment; thus, the Court found their motion moot. (*See* Doc. 136 at 1 n.1). The Normal Defendants argue the inclusion of these exhibits is improper because the Court did not rely on them when ruling on the Normal Defendants’ motion for summary judgment, which is the ruling Plaintiff now appeals, and the record on appeal should consist only of documents considered by the Court in making that determination. (Doc. 143 at 3-4). In response, Plaintiff argues that the entire record is presumptively transmitted anyway so there is no need to strike any matter. (Doc. 144 at 1-2). Plaintiff also argues the weight to assign a document is for the appellate court to determine. (Doc. 144 at 2).

The Court sees no relevance to the exhibits at issue, as they were submitted in support of a motion for summary judgment that was mooted after the defendants that filed it were voluntarily dismissed from the case, and they were not considered by the Court in reaching the determination now being appealed. However, as Plaintiff points out, it is for the Court of Appeals to determine the weight of the evidence and matters on the record. Defendants are free to argue on appeal that the documents are irrelevant, but the Court sees no need to strike them from the record at this time, effectively removing that choice from the Court of Appeals. Further,

Defendants point to no inaccuracies in the docket entries at issue. There can be no dispute “about whether the record truly discloses what occurred in the district court” or whether material is “misstated in the record,” as Federal Rule of Appellate Procedure 10(e) contemplates. The exhibits, though not the basis for the ruling of the Court, were properly filed in the record before this Court. Accordingly, Defendants’ motion to correct the appellate record is denied.

IT IS THEREFORE ORDERED that Defendants’ Objection to Plaintiff’s Designation of Filings for Record on Appeal (Doc. 143), construed by the Court as a motion to correct or strike matters from the appellate record, is DENIED. The Clerk is DIRECTED to transmit this Order to the Court of Appeals as part of the record pursuant to Circuit Rule 10(b).

Entered this 7th day of March, 2014.

s/ Joe B. McDade

JOE BILLY McDADE
United States Senior District Judge