

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

PETER ALLEN WHARTON,

Plaintiff,

v.

DENNIS CARTER, DDS *et al.*,

Defendants.

CAUSE NO. 3:21-CV-861-JEM

OPINION AND ORDER

Peter Allen Wharton, a prisoner without a lawyer, moves the court for reconsideration from its order granting summary judgment in favor of defendant Nurse Megan. ECF 80. Mr. Wharton also moves to amend his motion for reconsideration to provide an additional affidavit. ECF 81.

The court granted summary judgment in favor of Nurse Megan because the undisputed facts showed Mr. Wharton didn't exhaust his claim against her before filing this lawsuit. ECF 78. Specifically, the court concluded the undisputed facts showed Mr. Wharton submitted a first grievance to the pod deputy but did not submit a second grievance to the Jail Commander, which was a necessary step to exhaust his remedies. *Id.* at 3-4. The court also rejected Mr. Wharton's argument he couldn't submit a second grievance because he was unable to obtain a grievance form, noting he submitted an unrelated grievance on November 19 and could have submitted a second grievance at that time. *Id.* at 4.

In his motion for reconsideration, Mr. Wharton argues his administrative remedies were unavailable because he submitted a grievance to the pod deputy and received only a signed copy of the grievance in response. ECF 80 at 2-6. Nevertheless, even accepting as true that Mr. Wharton submitted a grievance and received only a signed copy in response, he still was required to submit a second grievance to the Jail Commander to fully exhaust his remedies. ECF 71-2 at 12. Mr. Wharton also reiterates his argument he was prevented from submitting a second grievance to the Jail Commander because he was unable to obtain a grievance form, but the court already considered and rejected this argument in its summary judgment order. *See Caisse Nationale de Credit Agricole v. CBI Industries, Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996) (“Reconsideration is not an appropriate forum for rehashing previously rejected arguments or arguing matters that could have been heard during the pendency of the previous motion”). Thus, Mr. Wharton has not provided any argument that warrants reconsideration of the court’s order granting summary judgment in favor of Nurse Megan.

For these reasons, Mr. Wharton’s motion to amend his motion for reconsideration (ECF 81) is GRANTED but his motion for reconsideration (ECF 80) is DENIED.

SO ORDERED.

March 29, 2024

s/ Damon R. Leichty
Judge, United States District Court