

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHERRY L. VANNORTWICK, as
Personal Representative of the Estate of
Claude Stevens, deceased,

Plaintiff,

Case No. 17-12507

v.

Honorable John Corbett O'Meara

ANTHONY H. STEWERT, *et. al.*,

Defendants.

**ORDER DENYING
PLAINTIFF'S MOTION FOR RECONSIDERATION**

On October 3, 2107, plaintiff Sherry L. Vannortwick, as personal representative of the estate of Claude Stevens, filed a motion for reconsideration of this court's September 19, 2017 order dismissing Count VI, which alleged a cause of action under Michigan's Wrongful Death Act, Mich. Comp. Laws Ann. § 600.2922. The court ordered Defendants to file a response; and the individual defendants and the State of Michigan defendants filed responses to the motion November 8, 2017. No oral argument was heard.

LAW AND ANALYSIS

Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration that merely present the

same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties and other persons entitled to be heard on the motion have been misled but also show that correcting the defect will result in a different disposition of the case.

L.R. 7.1(h)(3).

Michigan's Wrongful Death Act does not create an independent cause of action. Frontier Ins. Co. v. Blaty, 454 F.3d 590 (6th Cir. 2006). The Act is merely a mechanism to provide for a claim to survive the death of the injured party that, at common law, would otherwise have been destroyed upon the death of the injured party. The Frontier court reiterated that "the Michigan wrongful death statute clearly provides not that death creates a cause of action, but that death does not extinguish an otherwise valid cause of action." Id. at 599-600. Thus, plaintiff Vannortwick's wrongful death claim should properly accompany and be pleaded as part of, not independent of, her claim under § 1983, over which this court has retained federal subject matter jurisdiction.

ORDER

It is hereby **ORDERED** that Plaintiff's motion for reconsideration is **DENIED**.

s/John Corbett O'Meara
United States District Judge

Date: December 4, 2017

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, December 4, 2017, using the ECF system.

s/William Barkholz
Case Manager