

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

CLARA M ADAMS

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:08cv289KS-MTP

**THE UNIVERSITY OF SOUTHERN MISSISSIPPI,
A PUBLIC UNIVERSITY; MR. JOSEPH MORGAN,
IN HIS CAPACITY AS THE CHIEF FINANCIAL OFFICER
FOR THE UNIVERSITY OF SOUTHERN MISSISSIPPI**

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter is before the court on Motion for Reconsideration of Summary Judgment [#52] filed on behalf of the plaintiff and a related outstanding motion for leave to file brief out of time [#46]. The court, having reviewed the motion, the pleadings and exhibits on file and being otherwise fully advised in the premises finds that the motions are not well taken and should be denied. The court specifically finds as follows:

On February 19, 2010 this court granted summary judgment to the defendants on a motion for summary judgment. A final judgment was entered that same day dismissing this case with prejudice. On February 26, 2010 the plaintiff filed a "Motion for Leave Due to Excusable Circumstances for Plaintiff's Memorandum in Response to Defendants' Motion for Summary Judgment," [#46]. On March 19, 2010, the plaintiff filed a Notice of Appeal [#47]. On June 4, 2010 the United States Court of Appeals for the Fifth Circuit entered its mandate dismissing the appeal for want of prosecution [#51].

Then, on June 29, 2010 the plaintiff filed the present motion for reconsideration [#52] of this court's February 19, 2010 grant of summary judgment [#s 44 & 45].

This case has been closed for nearly five months and a notice of appeal has been filed and dismissed. This case is concluded and absent action by the Fifth Circuit to vacate its mandate of dismissal, the court is doubtful that it has any authority to grant any relief to the plaintiff. If it could, the only rule applicable to the request by the plaintiff appears to be Rule 60 of the Federal Rules of Civil Procedure. Specifically, Rule 60(b) provides:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason justifying relief.

Additionally, Rule 60(c) provides:

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time--and for reasons (1), (2), and (3) no more than a year after the entry

of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

Motions to alter or amend a judgment must clearly establish either a manifest error of law or fact or must present newly discovered evidence. Such a motion cannot be used to raise arguments which could, and should, have been made before the judgment issued. Nor, can it be used to argue a case under a new legal theory. See *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir.1990) (quoting *Fed. Deposit Ins. Corp. v. Meyer*, 781 F.2d 1260, 1268 (7th Cir.1986)). The plaintiff herein has provided no justifiable basis to set aside the final judgment issued in this case on February 19, 2010.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion for Reconsideration of Summary Judgment **[#52]** filed on behalf of the plaintiff and a related outstanding motion for leave to file brief out of time **[#46]**, filed by the plaintiff are denied.

SO ORDERED AND ADJUDGED this the 15th day of July, 2010.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE