

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

DIANE STARK

PLAINTIFF

V.

CIVIL ACTION NO. 2:13cv31-KS-MTP

**UNIVERSITY OF SOUTHERN MISSISSIPPI,
JEFF HAMMOND, INDIVIDUALLY AND OFFICIALLY,
DR. MARTHA SAUNDERS, INDIVIDUALLY AND OFFICIALLY;
BOARD OF TRUSTEES OF STATE INSTITUTIONS OF
HIGHER LEARNING**

DEFENDANTS

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

This matter is before the Court on the Plaintiff Diane Stark's Motion for Reconsideration [81]. Plaintiff requests that the Court reconsider its prior ruling, denying her Motion for Relief Pursuant to *FRCP* Rule 56(d) and Local Rule 16 [74]. (See Mem. Op. & Order [80].) That motion asserted that the Plaintiff needed time to conduct discovery before responding to Defendant Dr. Martha Saunders' Motion to Dismiss [62] pursuant to Federal Rule of Civil Procedure 12(b)(6).

Plaintiff's request for reconsideration is not well taken. No authority cited by the Plaintiff in support of her original motion or her reconsideration motion holds that a plaintiff is entitled to conduct discovery before responding to a defendant's request for dismissal under Rule 12(b)(6).¹ Furthermore, Plaintiff's position that her time to respond to Defendant Saunders' dismissal motion should be stayed pending the completion of discovery borders on frivolity. Defendant Saunders' Rule 12(b)(6) request for dismissal centers on the adequacy of Plaintiff's pleadings and not whether the absence of fact

¹ In that vein, Plaintiff would do well to review the current version of Local Uniform Civil Rule 16, which leaves the decision on whether to permit discovery related to an immunity defense "to the discretion of the court." L.U.Civ.R. 16(b)(3)(B).

issues in the discovery record mandates the entry of summary judgment. See *McClendon v. City of Columbia*, 305 F.3d 314, 323 (5th Cir. 2002) (distinguishing the relevant inquiry as between a motion to dismiss and a motion for summary judgment).

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiff's Motion for Reconsideration [81] is denied.

SO ORDERED AND ADJUDGED this the 21st day of October, 2013.

s/ Keith Starrett
UNITED STATES DISTRICT JUDGE