## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

JOSEPH LEROY DAYRINGER, Register No. 161097, and JAMES ERIC MANSFIELD, Register No. 191434,	
Plaintiffs,	
v.	
DAVID WEBSTER, et al.,	
Defendants.	

No. 08-4128-CV-C-MJW

## **ORDER**

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On March 16, 2012, pro se plaintiffs Joseph Leroy Dayringer and James Eric Mansfield filed a motion requesting the Court to add or amend its Findings of Fact and Conclusions of Law. (Doc. 178). Plaintiffs further requested a hearing to argue the matter and a new trial. Plaintiffs' motion was filed pursuant to Rules 52(b) and 59 of the Federal Rules of Civil Procedure. Defendants filed a response in opposition on April 2, 2012. (Doc. 179.)

The Court has carefully reviewed plaintiffs' motion and defendants' response. Plaintiffs are correct that defendants' Exhibit 12 was excluded from evidence. As a result, the Court will not consider Exhibit 12 in arriving at its decision in any manner.

Plaintiffs' motion is GRANTED as follows:

A. Paragraph five (5) of the Court's Findings of Fact and Conclusions of Law (Doc.

174) is amended as follows:

- 5. In the Spring of 2007, defendant Webster received information concerning the possible theft of materials from the Handicap Center where plaintiff Mansfield worked. In addition, defendant Webster received other information that led him to believe plaintiff Mansfield may have illegally made copies while working in the Handicap Center (Webster Tr. 22-23).
- B. Paragraph eighteen (18) of the Court's Findings of Fact and Conclusions of Law is stricken in its entirety.

The Court specifically notes and finds that the amendment of paragraph five(5) and deletion of paragraph eighteen (18) are immaterial and do not impact the Court's original decision to dismiss plaintiffs' claims.

Plaintiffs' remaining objections and requests for additions are without merit and are DENIED. Plaintiffs have not established there was a manifest error of law or fact in the Court's Findings of Fact and Conclusions of Law.

Plaintiffs clearly have not established that a new trial is necessary to avoid a miscarriage of justice. "Generally, new trials are granted only if the record presents prejudicial error or substantial justice has not been done." <u>Comerio v. Beatrice Foods Co.</u>, 616 F. Supp. 1423, 1428 (E.D. Mo. 1985). <u>See also Sifers Corp. v. Arizona Bakery Sales Co.</u>, 133 F.R.D. 607 (1991). The burden of demonstrating the verdict was against the weight of the evidence or showing prejudicial error is on the moving party. <u>Comerio</u>, 616 F. Supp at 1428. Plaintiffs were afforded a full and fair opportunity during the trial to present their claims; however, their claims were not substantiated factually or legally.

Finally, an additional hearing on plaintiffs' motion will not benefit the Court and is unnecessary.

Accordingly, plaintiffs' requests to add or amend the Findings of Fact and Conclusions of Law and for new trial (Doc. 178) is GRANTED, in part, and DENIED, in part, consistent with the above discussion.

Dated this 27<sup>th</sup> day of April, 2012, at Jefferson City, Missouri.

1sl Matt J. Whitworth

MATT J. WHITWORTH United States Magistrate Judge