

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

MICHAEL TERRANCE WALLER,)
)
 Plaintiff,)
)
 v.) No. 08-3395-CV-S-WAK
)
CITY OF SPRINGFIELD, MISSOURI,)
)
 Defendant.)

ORDER

Plaintiff Michael Waller requests reconsideration of the court's order of dismissal and he requests a shortened time for ruling on the motion for reconsideration. Plaintiff asserts that a fundamental miscarriage of justice has occurred. Attached to the motion are suggestions in support which appear to deal with matters that occurred in plaintiff's state court proceedings on child custody issues and his criminal case. Plaintiff also cites old case law indicating that the statute of limitations was tolled while he was incarcerated. Mo. Ann. Stat. § 516.170 (West 2002), however, was amended in 1990 and imprisonment was removed as a disability. Thus, the statute of limitations was not tolled during plaintiff's incarceration.

Plaintiff's motion will be treated as a request to alter or amend the judgment under Federal Rule of Civil Procedure 59(e) because it was filed within ten days after the date judgment was entered. See Beck v. Bowersox, 362 F.3d 1095, 1098 n.2 (8th Cir. 2004) (objections filed within 10 days of the district court's dismissal order must be treated as a motion under Rule 59(e)) (citing Quartana v. Utterback, 789 F.2d 1297, 1300 (8th Cir. 1986) ("Any motion that draws into question the correctness of the judgment is functionally a motion under Civil Rule 59(e), whatever its label," if filed within 10 days of entry of judgment.)). After consideration, plaintiff's motion will be denied.

IT IS, THEREFORE, ORDERED that plaintiff's motion to reconsider, treated as a request to alter or amend the judgment, is denied. [10] It is further ORDERED that plaintiff's motion to shorten the time for ruling is denied as moot. [11]

Dated this 23rd day of January, 2009, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX
United States Magistrate Judge