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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHRISTOPHER A. JONES,

Plaintiff,

v.

DWIGHT NEVEN, et al.,

Defendant.

2:07-CV-1088 JCM (GWF)

Date: N/A
Time: N/A

ORDER

Presently before the court are the findings and recommendations of Magistrate Judge George Foley, Jr (doc. #181) regarding the plaintiff’s motion to modify scheduling order (doc. #179). Plaintiff filed an objection (doc. #184) and defendants filed an opposition to the objection (doc. #193).

In the magistrate judge’s findings and recommendations (doc. #181), he recommends that the court deny plaintiff’s motion to modify scheduling order (doc. #179), because “the proposed amendment would be futile and subject to dismissal on the same grounds identified by the [c]ourt in its prior order of dismissal.” Specifically, the magistrate judge held that plaintiff is attempting to revive an already dismissed claim for medical negligence by the requested amendment, and that such amendment would be futile, as plaintiff has failed to provide the court with the necessary affidavit¹.

¹ For a claim of medical negligence, plaintiff must submit an affidavit by a qualified medical expert. NRS § 41A.071.

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In the plaintiff's objection (doc. #184), he contends that the court misunderstood his intent, and that he is seeking to "first obtain a modification of the scheduling order..." and then "later submit a motion to amend and the amended complaint with the accompanying affidavit per LR 15-1 and NRS 41A.071." The court agrees with defendants, that plaintiff is merely seeking to find out if the court would allow him to amend before spending the money to obtain an affidavit. This is improper. *See* NRS § 41A.071.

In the defendants' opposition (doc. #193), they assert that this court should affirm the recommendation, because (1) the plaintiff has failed to submit the required affidavit, (2) plaintiff is required to do so prior to being granted leave to amend, (3) the statute of limitations has run on the medical negligence claim, and (4) the complaint was filed in 2007, and the defendants would be unduly prejudiced if the court were to allow plaintiff to revive the claim now.

Upon review of the magistrate judge's recommendation (doc. #181) and the objection and opposition thereto,

IT IS HEREBY ORDERED ADJUDGED AND DECREED that findings and recommendations of Magistrate Judge George Foley, Jr (doc. #181) regarding the plaintiff's motion to modify scheduling order (doc. #179) be, and the same hereby are, AFFIRMED in their entirety.

IT IS THEREFORE ORDERED that plaintiff's motion to modify scheduling order (doc. #179) be, and the same hereby is, DENIED.

DATED this 22nd day of July, 2011.


UNITED STATES DISTRICT JUDGE