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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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J. BENJAMIN ODOMS,

v.
ROMEO ARANAS, et al.,

Plaintiff,

Defendants.

Case No. 3:16-cv-00159-MMD-WGC

ORDER

I. SUMMARY

Plaintiff J. Benjamin Odoms is a prisoner in the care and custody of the Nevada Department of Corrections (“NDOC”) and seeks curative treatment for his infection with the hepatitis-C virus (“HCV”). Before the Court is Plaintiff’s motion for reconsideration (ECF No. 95) of the Court’s August 27, 2018 order (“Order”) (ECF No. 93) granting summary judgment in favor of Defendants. The Court has reviewed Defendants Karen Gedney and Marsha Johns’s response (ECF No. 96) as well as Plaintiff’s reply (ECF No. 97). For the following reasons, the Court will deny Plaintiff’s motion for reconsideration.

II. LEGAL STANDARD

A motion to reconsider must set forth “some valid reason why the court should reconsider its prior decision” and set “forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision.” *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if the Court “(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” Sch. Dist. No.

1 1J v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). “A motion for reconsideration is
2 not an avenue to re-litigate the same issues and arguments upon which the court already
3 has ruled.” Brown v. Kinross Gold, U.S.A., 378 F. Supp. 2d 1280, 1288 (D. Nev. 2005)
4 (citation omitted).

5 **III. DISCUSSION**

6 Plaintiff does not present a coherent argument in support of his request for
7 reconsideration of the Order. Rather, Plaintiff primarily makes a number of factual
8 allegations, including the following. Plaintiff has not been allowed to talk to the hernia
9 specialist for two years. (ECF No. 95 at 2.) Plaintiff is forced to take pain pills that “destroy
10 and hasten his d[e]mise (kidney and liver).” (Id.) Defendants do not treat Plaintiff’s low
11 blood pressure and know he gets the chills. (Id. at 2-3.) Defendants do not know the type
12 of HCV Plaintiff has. (Id. at 3.) Defendants’ decision to withhold direct-acting antiviral
13 (“DAA”) drugs guarantees Plaintiff’s death, and the decision concerning Plaintiff’s health
14 was a conscious one to cause Plaintiff’s death. (Id. at 3.) Defendants have not adequately
15 tested Plaintiff’s liver function. (Id. at 3-4; ECF No. 97 at 2-3.)

16 In addition to making these factual allegations, Plaintiff asserts that the Court may
17 not make credibility determinations in connection with a motion for summary judgment
18 and attaches to his motion a list of his medication and a copy of his second amended
19 complaint. (ECF No. 95 at 4, 6-21.)

20 Defendants focus on three aspects of Plaintiff’s motion in their response: (1)
21 Plaintiff’s allegations regarding his hernia and pain medication; (2) Plaintiff’s allegation
22 that Defendants’ decision not to treat Plaintiff with DAA drugs guarantees his death; and
23 (3) Plaintiff’s assertion that the Court should not make credibility determinations in
24 connection with a motion for summary judgment. (ECF No. 96 at 2.)

25 Regarding the first point, Defendants argue that Plaintiff’s allegations regarding his
26 hernia and pain medication have no bearing on the Court’s determination that
27 Defendants’ decision to provide palliative care was not medically unacceptable under the
28 circumstances. (Id.; see also ECF No. 93 at 4.) Plaintiff’s reply does not address this

1 argument (see ECF No. 97), and the Court agrees with Defendants. Defendants' decision
2 to treat Plaintiff's pain with medication is consistent with their decision to provide palliative
3 care, and Plaintiff still has not produced any evidence to rebut Defendants' assertion that
4 providing DAA will harm him. (See ECF No. 95; ECF No. 97; ECF No. 93 at 5.) To the
5 extent that Plaintiff's allegations regarding pain medications give rise to an independent
6 claim for violation of the Eighth Amendment, such a claim was not before the Court when
7 it issued the Order.

8 Regarding the second point, Defendants argue that the evidence before the Court
9 showed that prescribing Plaintiff DAA treatment would cause more harm than good in
10 light of his decompensated liver disease. (ECF No. 96 at 2.) Liberally construed, Plaintiff's
11 reply seems to argue that he should receive treatment under NDOC Medical Directive
12 219 ("MD 219") because his APRI¹ score is 1.88 and the threshold for treatment is 1.77.
13 (ECF No. 97 at 3-4.) The Court agrees with Defendants. Even if MD 219 suggests that
14 Plaintiff should receive treatment, the evidence before the Court showed that prescribing
15 DAA treatment to Plaintiff would cause him harm, and Plaintiff still has not produced any
16 evidence to the contrary. (See ECF Nos. 95, 97.)

17 Regarding the third point, Defendants argue that the Court did not make a
18 credibility determination in the Order. (ECF No. 96 at 2.) Plaintiff does not address this
19 argument in his reply (see ECF No. 97), and the Court agrees with Defendants. In the
20 Order, the Court determined that Defendants provided evidence that Plaintiff's desired
21 course of treatment would harm Plaintiff and that Plaintiff failed to produce any evidence
22 to the contrary. (See ECF No. 93 at 5 ("Plaintiff has provided no evidence to rebut
23 Defendants' assertion that providing DAA will harm him, nor does Plaintiff dispute that he
24 has been provided palliative care.")) Because Plaintiff still has not produced any such
25 evidence, the Court declines to reverse the Order.

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28 ¹Aspartate Aminotransferase Platelet Ratio Index. (See ECF No. 73 at 2.)

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IV. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the motion before the Court.

It is therefore ordered that Plaintiff's motion for reconsideration (ECF No. 95) is denied.

DATED THIS 5th day of October 2018.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE