

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LAVERNE WARE, et al.,

Plaintiffs,

Case # 08-CV-720-FPG

v.

DECISION AND ORDER

CITY OF LACKAWANNA, et al.,

Defendants.

Plaintiffs brought this action against Defendants alleging that they had been terminated in violation of their First Amendment rights. ECF No. 1. In October 2012, Defendants moved to dismiss the case for lack of prosecution pursuant to Federal Rule of Civil Procedure 41(b). ECF No. 33. Plaintiffs did not file a response. Magistrate Judge Leslie G. Foschio recommended that the motion be granted, ECF No. 36, a conclusion which District Judge Richard J. Arcara adopted. ECF No. 37. Judgment was thereafter entered.

Approximately two months later, Plaintiffs filed a motion for reconsideration. ECF No. 39. Plaintiffs' counsel explained that he had undergone several surgeries that diverted his attention from the case. *Id.* at 4-5. Counsel admits that he "should have contacted the Court to advise [it] of his physical condition and request an extension of time," but he argues that Defendants cannot show prejudice warranting dismissal of the case. *Id.* at 5.

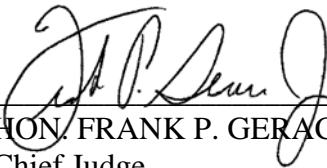
Plaintiffs' motion does not merit relief. "A motion for reconsideration is an extraordinary request that is granted only in rare circumstances." *SEC v. Craig Scott Capital, LLC*, No. 16-CV-4757, 2020 WL 435034, at *2 (E.D.N.Y. Jan. 28, 2020). While counsel's alleged illnesses may explain some delays, they do not excuse the other lengthy periods of inaction. Moreover, counsel did not move for reconsideration until nearly two months after judgment was entered. Therefore,

if anything, Plaintiffs' motion reinforces, rather than undermines, the conclusion that dismissal is the appropriate sanction for their failure to prosecute.

Accordingly, Plaintiffs' motion for reconsideration (ECF No. 39) is DENIED. This case remains closed.

IT IS SO ORDERED.

Dated: July 21, 2020
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court