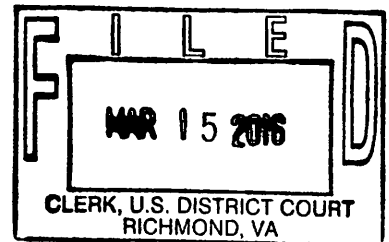


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



JOSEPH A. DANIELS,

Plaintiff,

v.

Civil Action No. 3:14CV856

PAUL E. CALDWELL,

Defendant.

MEMORANDUM OPINION

Joseph A. Daniels, a Virginia prisoner proceeding pro se and in forma pauperis, filed this action entitled "MOTION FOR JUDGMENT" wherein he seeks "relief from judgment entered on April 10, 2014, Case No. 3:11-cv-461-REP, where such judgment granting defendant summary judgment is void." (Mot. 1, ECF No. 1.) Daniels believes "[t]he judgment is void in that the plaintiff was denied his Due Process Right to have the disputed material facts decided by a jury" (Id.)

As background, by Memorandum Opinion and Order entered on December 18, 2013, the Court granted Defendant Paul E. Caldwell's Motion for Summary Judgment and dismissed the action as factually frivolous. See Daniels v. Caldwell, No. 3:11CV461, 2013 WL 6713129, at *4 (E.D. Va. Dec. 18, 2013).¹ Subsequently,

¹ The Court explained that:

Daniels's claim of deliberate indifference is predicated upon the allegation that Dr. Caldwell unnecessarily removed Daniel's deltoid muscle and failed to provide Daniels with physical therapy

on April 10, 2014, the Court denied Daniels's Motion for Reconsideration under Federal Rule of Civil Procedure 59(e). (ECF No. 81.) The United States Court of Appeals for the Fourth Circuit affirmed. Daniels v. Caldwell, 569 F. App'x 159 (4th Cir. 2014). The Supreme Court of the United States denied Daniels's petition for a writ of certiorari. Daniels v. Caldwell, 135 S. Ct. 200 (2014).

Having reached the end of the appeals process without the result he desired, Daniels filed an "INDEPENDENT ACTION" seeking relief from the judgment." (Mot. 1.) By Memorandum Opinion and Final Order entered on November 16, 2015, the Court denied the Motion for Judgment, and dismissed the action as legally and factually frivolous. Daniels v. Caldwell, No. 3:14CV856, 2015 WL 7283121, at *2 E.D. Va. Nov. 16, 2015); (ECF Nos. 12-13.) On December 1, 2015, Daniels filed a Motion to Vacate or Grant New

following Daniel's surgery. . . . Such a claim is factually frivolous. The evidence reflects that Dr. Caldwell did not remove Daniel's deltoid muscle and provided Daniels with physical therapy following his surgery. Indeed, Daniels bears sole responsibility for the termination of his physical therapy. Because the evidence reflects that Dr. Caldwell provided reasonable medical care, rather than acting with deliberate indifference, the Motion for Summary Judgment will be granted. Daniels's claim will be dismissed.

Daniels, 2013 WL 6713129, at *3.

Trial that the Court construes as a motion pursuant to Federal Rule of Civil Procedure ("Rule 59(e) Motion," ECF No. 16).

The United States Court of Appeals for the Fourth Circuit recognizes three grounds for relief under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing Weyerhaeuser Corp. v. Koppers Co., 771 F. Supp. 1406, 1419 (D. Md. 1991); Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625, 626 (S.D. Miss. 1990)). Daniels asserts that "the judgment entered by the District Court is plainly wrong when it dismissed plaintiff's action as legally and factually frivolous when there existed a material factual dispute as to whether plaintiff's left anterior deltoid shoulder muscle was removed." (Rule 59(e) Mot. 1-2.) As the Court has explained at least twice before to Daniels, "[t]he evidence reflects that Dr. Caldwell did not remove Daniel's deltoid muscle." Daniels, 2013 WL 6713129, at *3.² Thus, contrary to Daniels insistent but incorrect stance, no "material factual dispute" existed. Because Daniels fails to demonstrate the Court committed a clear

² Daniels attaches the Operative Report of Dr. Caldwell that was submitted previously by Caldwell in support of his Motion for Summary Judgment in Daniels v. Caldwell, No. 3:11CV451. The Court considered this evidence in granting the Motion for Summary Judgment for Caldwell.

error of law or any other basis for granting relief, the Rule 59(e) Motion (ECF No. 16) will be denied.

The Clerk is directed to send a copy of the Memorandum Opinion to Daniels.

It is so ORDERED.

Date: *March 14, 2016*
Richmond, Virginia

/s/ REA

Robert E. Payne
Senior United States District Judge