

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ROGER ALLEN COSE,

Plaintiff,

v.

MARY GORSKE and CHARLES LARSON,

Defendants.

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ORDER

14-cv-540-jdp

Pro se plaintiff and prisoner Roger Allen Cose has filed a motion to alter or amend the judgment under Rule 59(e) of the Federal Rules of Civil Procedure. Dkt. 66. For the reasons stated below, I will deny the motion.

Cose raised various claims against defendants Charles Larson (a physician) and Mary Gorske (a nurse) related to their alleged failure to provide adequate treatment for his fractured fibula, in violation of the Eighth Amendment. I granted defendants' motion for summary judgment because no reasonable jury could find that defendants consciously refused to provide reasonable treatment. I also denied Cose's motions for sanctions because he failed to show that defendants had engaged in any misconduct.

In his opening brief in support of his Rule 59 motion, Cose focuses on issues related to his sanctions motions, alleging that "newly discovered evidence" shows that some of the documents included in the medical records defendants provided relate to another prisoner. As an initial matter, Cose admits that he has possessed the "new" evidence since November 2016, more than a year before the court decided the sanctions and summary judgment motions. "A party may not introduce evidence or make arguments in a Rule 59 motion that could or should have been presented to the court prior to judgment," *United States v. 47 West 644 Route 38*,

*Maple Park, Illinois*, 190 F.3d 781, 783 (7th Cir. 1999), which is reason alone to deny Cose's motion.

Regardless, the evidence Cose cites does not show that defendants engaged in litigation misconduct or violated his rights. Assuming that Cose's allegations are true, they might show that there are errors in some of his medical records. But he cites no evidence that *defendants* or their counsel are responsible for the errors or that the errors are connected in any way to the medical decisions at issue in this case.

In his reply brief, which is more than three times longer than his opening brief, Cose contends for the first time that the summary judgment opinion includes various legal errors. A party may not raise new issues in a reply brief, *Casna v. City of Loves Park*, 574 F.3d 420, 427 (7th Cir. 2009), which, again, is a sufficient reason to reject his arguments.

In any event, Cose's arguments fail on the merits as well. Some of his arguments are simply repeats of those he raised in his summary judgment briefs. His other arguments are factually unsupported or are irrelevant to the issues decided in the summary judgment decision. For example, Cose alleges that his condition worsened as a result of delays in his treatment. But that is irrelevant because I did not grant summary judgment on the ground that Cose failed to show harm. Rather, Cose lost because he failed to adduce evidence that defendants intentionally failed to provide reasonable care. *Vance v. Peters*, 97 F.3d 987, 992 (7th Cir. 1996) (“[A] defendant's inadvertent error, negligence or even ordinary malpractice is insufficient to rise to the level of an Eighth Amendment constitutional violation.”). Because Cose still fails to cite any evidence that would allow a reasonable jury to find that defendants violated the Eighth Amendment, I will deny his Rule 59 motion.

ORDER

IT IS ORDERED that plaintiff Roger Allen Cose's motion to alter or amend the judgment under Rule 59(e), Dkt. 66, is DENIED.

Entered April 9, 2018.

BY THE COURT:

/s/

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JAMES D. PETERSON  
District Judge