

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES GEORGE DOURIS : CIVIL ACTION
 :
 v. :
 :
 COUNTY OF BUCKS & MARIE COSTELLO : NO. 99-3357

MEMORANDUM AND ORDER

HUTTON, J.

September 15, 2000

Presently before this Court is Plaintiff George Douris's Motion for Reconsideration Under Rule 60 of the Federal Rules of Civil Procedure and Local Civil Procedure Rule 7.1(g) (Docket No. 21) and Defendants County of Bucks and Marie Costello's ("Defendants") Reply (Docket No. 27). For the reasons stated below, the motion is **DENIED**.

I. BACKGROUND

The instant matter arises from Plaintiff's complaint that Defendants violated his rights as provided for in the Americans with Disabilities Act ("ADA"), the Age Discrimination in Employment Act ("ADEA"), Section 1983 of Chapter 42 of the U.S.C. and the Pennsylvania Human Relations Act ("PHRA").

On July 10, 2000, Defendants filed a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. The Defendants sought to prevent Plaintiff from taking the depositions of five Bucks County employees. Plaintiff failed to respond to

Defendants' motion and the Court granted Defendants' motion as uncontested pursuant to Rule 7.1(c) of the Local Rules of Civil Procedure. Plaintiff now makes a motion to reconsider this Court's decision to grant Defendants' protective order as uncontested.

II. DISCUSSION

In the instant action, Plaintiff argues that this Court must grant him relief, pursuant to Federal Rule of Civil Procedure 60(b). Federal Rule of Civil Procedure 60(b) provides in relevant part that:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect

FED. R. CIV. P. 60(b). The United States Court of Appeals for the Third Circuit has held that the purpose of this rule is "to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done." *Boughner v. Secretary of Health, Educ., & Welfare*, 572 F.2d 976, 977 (3d Cir. 1978) (citing CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2851 (West 2000)). In fact, it is well settled that "in most cases an attorney's negligence will not relieve his client from an adverse judgment. *James v. Int'l Bus. Mach., Inc.*, No. CIV.A.88-6285, 1991 WL 86918, at *3 (E.D. Pa. May 20, 1991); see also *Quality Prefabrication, Inc. v. Daniel J. Keating Co.*, 675

F.2d 77, 79 n.3 (3d Cir. 1982) (counsel's failure to respond to motion because of unfamiliarity with federal practice not "excusable neglect" necessary for relief from Rule 60(b) judgment). Moreover, the failure to present evidence or a legal argument which was available at the time of the judgment is not an exceptional circumstance justifying relief." See *id.*

Plaintiff also relies upon Local Rule of Civil Procedure 7.1(g) which provides "[m]otions for reconsideration or reargument shall be served and filed within ten (10) days after the entry of the . . . order" See E.D. PA. R. CIV. P. 7.1(c) (West 2000). The comments to the Rules note that "[t]he purpose of a motion for reconsideration is to correct manifest errors of law or fact Courts will reconsider an issue only . . . 'when there is a need to correct a clear error or prevent manifest injustice'". See E.D. PA. R. CIV. P. 7.1, Cmt. 6(b); see also *Burger King Corp. v. New England Hood and Duct Cleaning Co.*, No. 98-3610, 2000 U.S. Dist. LEXIS 1022, *4 (Feb. 4, 2000).

This Court has previously stated that a party's "ignorance of the law and carelessness in its application are not sufficient grounds under Rule 60(b) for this Court to reconsider its order." See *Lee v. Toyota Motor Sales, U.S.A., Inc.*, No. 96-2337, 1997 U.S. Dist. Lexis 6889, at *5 (May 16, 1997) (Hutton, J.). In *Lee*, the plaintiff failed to respond to an in limine motion and the Defendant's motion was granted as uncontested pursuant to Local

Rule 7.1. See id. at *2. The plaintiff sought relief from the court under Rule 60(b) of the Federal Rules of Civil Procedure. See id. at *2. The plaintiff motioned the Court to reconsider its grant of an uncontested order because of "mistake, inadvertence and, excusable neglect." See id. at *4. The plaintiff claimed her error stemmed from "her mistaken belief that the motion in limine would be held until an appropriate point in the trial." See id. at *9. The plaintiff mistakenly relied on a practitioner's guide, rather than the official local rules, in forming her legal opinion. See id. at *5-10. The Court held that the plaintiff's ignorance of the law and carelessness in its application are not sufficient grounds for the court to reconsider its order. See id.

In this case, Plaintiff moves this Court to reconsider its decision to grant Defendants' protective order as uncontested. Plaintiff claims that the Court's basis for granting the motion was "not factually correct and the result of a mistake, inadvertence or excusable neglect on the part of the Plaintiff." See Pl.['s] Brief in Support of Motion for Reconsideration. Plaintiff explains that he "thought the motion was decided or made moot by the courts [through the] July [14], 2000 order." See id.

An explanation of the motions filed by Plaintiff and Defendants in this case will demonstrate that the Court's decision to grant the Defendants' motion as uncontested was correct. On

June 20, 2000, Defendants' filed a motion for a protective order ("Motion I") to limit the deposition of Dr. Lewis Polk. Plaintiff filed a response on June 27, 2000. On July 10, 2000, Defendants' filed another motion ("Motion II") for a protective order that sought to prevent Plaintiff from deposing (1) Harry Armitage; (2) Theodore O' Rourke, (3) Michelle Henry; (4) Theodore Fritsch; and (5) Bill Laboski. On July 14, 2000, this Court denied Motion I with leave to renew. The Court's opinion did not deal with Motion II. Because Plaintiff did not respond to Motion II, this Court granted Defendants' motion as uncontested pursuant to Local Rule of Civil Procedure 7.1(c). See E.D. PA. R. CIV. P. 7.1(c) (West 2000).

Plaintiff now asks this Court to excuse his failure to respond to Motion II. Plaintiff asserts that he failed to respond to Motion II because of "the mistaken belief the motion was moot by virtue of [the] court's July [14], 2000 order," that denied Motion I with leave to renew and allowed Plaintiff to amend his complaint. See Plaintiff's Motion for Reconsideration. Plaintiff fails to point to any legal basis for his mistaken belief. As in Lee, Plaintiff here provides no excuse other than his own carelessness. See Lee, 1997 U.S. Dist. LEXIS 6889, at *4.

As discussed above, the case law demonstrates that carelessness on the part of a party's attorney does not warrant reconsideration of this Court's order. Accordingly, this Court

holds that Plaintiff's ignorance of the law and carelessness in its application are not sufficient grounds under Rule 60(b) for this Court to reconsider its order.

An appropriate Order follows.

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O R D E R

AND NOW, this 15th day of September, 2000, upon consideration of Plaintiff George Douris's Motion for Reconsideration Under Rule 60 of the Federal Rules of Civil Procedure and Local Civil Procedure Rule 7.1(g) (Docket No. 21) and Defendants Reply (Docket No. 27), IT IS HEREBY ORDERED that said Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.