

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

<b>DARRYL B. WATSON,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff,</b>	:	
	:	<b>NO. 06-0883</b>
	:	
<b>v.</b>	:	
	:	
<b>CITY OF PHILADELPHIA, et al.,</b>	:	
<b>Defendants.</b>	:	
	:	

**MEMORANDUM AND ORDER**

Stengel, J.

September 28, 2006

*Pro se* plaintiff, Darryl Watson, filed a motion for reconsideration of this court's August 22, 2006 Memorandum & Order (“August 22nd Order”) granting the defendants' motion for judgment on the pleadings. The court granted the motion for judgment on the pleadings because the plaintiff failed to file his claims within the applicable statutes of limitations. The plaintiff also requests that the court permit him to present limited additional evidence.

It appears the plaintiff is arguing that the motion for reconsideration should be granted on two grounds: (1) the "discovery rule" should apply to his intentional infliction of emotional distress ("IIED") claim; and (2) the statutes of limitations should have been equitably tolled because the Philadelphia Prison System concealed information from him.

The defendants responded to the plaintiff's motion for reconsideration by arguing: (1) the motion is time-barred by the Local Rules of Civil Procedure of the United District

Court for the Eastern District of Pennsylvania;<sup>1</sup> and (2) the plaintiff did not satisfy the motion for reconsideration standard because he presented no new evidence for the court to take into account.

## **I. BACKGROUND**

The facts of this case, as stated in the August 22nd Order, are as follows:

While employed as a Correctional Lieutenant at the Philadelphia Detention Center, *pro se* plaintiff Daryl Watson received three phone calls at his home, made via a third-party, from an inmate at the Philadelphia Detention Center. All three phone calls, made on May 3, May 13, and June 11, 2003, were recorded by the Philadelphia Detention Center. On July 30, 2003, Watson was questioned by the Philadelphia Prisons Internal Affairs Division about the content of the phone calls. Approximately twenty-two days later, Watson received an Employee Disciplinary Report based in part upon the recorded phone calls. On November 6, 2003, Watson attended a Disciplinary Hearing where part of the recorded phone calls were played.

After hearing the recorded calls, Watson voluntarily resigned. On February 28, 2006, Watson attempted to initiate this case by filing a motion to proceed *in forma pauperis*. Following the Court's March 8, 2006, denial of that motion, Watson paid the filing fee and entered his complaint on March 13, 2006. The four count complaint names the City of Philadelphia, Commissioner Leon King, and Deputy Commissioner Elsa Legesse as defendants for allegedly: (1) violating state and federal wiretap statutes; (2) subjecting Watson to cruel and unusual punishment; (3) creating a custom or policy of violating one's constitutional rights; and (4) for intentional infliction of emotional distress.

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<sup>1</sup>Local Rule of Civil Procedure 7.1(g) states: "Motions for reconsideration or reargument shall be served and filed within ten (10) days after the entry of judgment, order, or decree concerned." E.D. Pa. R. 7.1(g). This argument of the defendants fails because in calculating the time in which to file a motion under the Local Rules, Federal Rule of Civil Procedure 6 ("FRCP 6") governs. According to FRCP 6, "[w]hen the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays [including Labor Day] shall be excluded in the computation." Fed. R. Civ. P. 6(a). Therefore, the motion for reconsideration must have been filed within "ten days" of the August 22nd Order, i.e., by September 6, 2006. Mr. Watson filed and served the current motion on September 5, 2006.

Watson v. City of Philadelphia, No. 06-0883, 2006 U.S. Dist. LEXIS 59476, at \*2-3 (E.D. Pa. Aug. 22, 2006). On July 11, 2006, the defendants filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) (“Rule 12(c)”)<sup>2</sup>. On August 22, 2006, this court issued its August 22nd Order granting the defendants motion because all of the plaintiff’s claims were time barred by the applicable statutes of limitations.

## **II. MOTION FOR RECONSIDERATION STANDARD**

“The purpose of the motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.” Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). A motion to reconsider is appropriate where: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is need to prevent manifest injustice or correct a clear error of law. See North River Ins. Co. v. CIGNA Reins. Co., 52 F.3d 1194, 1218 (3d Cir. 1995); New Chemic (U.S.), Inc. v. Fine Grinding Corp., 948 F. Supp. 17, 18-19 (E.D. Pa. 1996).

“A motion for reconsideration is not intended to provide a losing party with a second bite at the apple.” Yang v. AstraZeneca, No. 04-4626, 2005 U.S. Dist. LEXIS 18567, at \* 2-3 (E.D. Pa. Aug. 29, 2005). It "is not properly grounded on a request that a court reconsider repetitive arguments that have been fully examined by the court." Tobin v. Gen. Elec. Co., No. 95-4003, 1998 U.S. Dist. LEXIS 693, at \*4 (E.D. Pa. Jan. 27, 1998). The motion should "address[] only factual and legal matters that the court may

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<sup>2</sup>“After the pleadings are closed but within such time as not to delay trial, any party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c).

have overlooked. It is improper on a motion for reconsideration to ask the Court to rethink what it had already thought through - rightly or wrongly." Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993) (citations and internal alterations omitted).

### **III. DISCUSSION**

The plaintiff argues that the court incorrectly applied the statutes of limitations for the various claims. He claims new evidence exists to support his motion and bases his argument on the discovery rule and equitable tolling. He does not point to any intervening change in controlling law or a manifest injustice caused by the August 22nd Order.

#### **A. Discovery Rule and the Tolling of the Statute of Limitations**

In his motion for reconsideration, the plaintiff states that at the November 6, 2003 disciplinary hearing “the intentional infliction of emotional distress first took place. . . . It is at this point the Plaintiff’s mental health immediately began to deteriorate and cause the Plaintiffs [sic] disability.” He then continues to list the various psychological problems he experienced after the defendants’ actions at the disciplinary hearing. He claims he did not discover these emotional distress injuries, however, until after he completed intense treatment and counseling in April 2005. As a result, the plaintiff argues that the discovery rule should apply, the two-year statute of limitation for IIED should be tolled until April 2005, and his IIED claim deemed timely.

In Pennsylvania, the discovery rule applies “[i]n those circumstances where the

plaintiff cannot reasonably be expected to be aware of the injury or of its cause.” Haggart v. Cho, 703 A.2d 522, 525 (Pa. Super. Ct. 1997) (citing Pocono Int'l Raceway v. Pocono Produce, 468 A.2d 468, 471 (Pa. 1983)). The effect of the discovery rule is that it tolls the statutes of limitations. “The discovery rule is a judicially created device which provides that the limitations period begins to run when the plaintiff knows or reasonably should know: (1) that he has been injured, and (2) that his injury has been caused by another party's conduct.” Id. (internal quotations omitted). However, “[a]s soon as the right to institute and maintain a suit arises; lack of knowledge, mistake or misunderstanding do not toll the running of the statute of limitations.” Pocono Int'l Raceway, 468 A.2d at 471.

Here, the plaintiff attempts to defeat this court’s August 22nd Order by offering evidence that previously was available to him. He hopes that this new evidence will be enough to invoke the discovery rule and defeat the basis for the judgment on the pleadings. His attempt fails for two reasons. First, a motion for reconsideration is not the appropriate time to offer evidence that a plaintiff had within his knowledge at the time a dispositive motion was decided. The plaintiff was fully aware of any medical treatment he received for his mental conditions when he responded to the defendants’ motion for judgment on the pleadings. Mr. Watson should have presented those facts in his response to the Rule 12(c) motion. Now is not the time to weigh another argument for the tolling of the statute of limitations. Only newly discovered, previously unavailable, evidence should be considered by the court at this juncture.

Second, even if the new evidence is taken into consideration, it would not impact this court's August 22nd Order. "The statute begins to run when the injured party [sic] 'possess sufficient critical facts to put him on notice that a wrong has been committed and that he need investigate to determine whether he is entitled to redress.'" Thompson v. AT&T Corp., 371 F. Supp. 2d 661, 682 (W.D. Pa. 2005) (applying Pennsylvania's statute of limitations and discovery rule to an IIED claim) (citing Haggart v. Cho, 703 A.2d 522, 526 (Pa. Super. Ct. 1997)). In Pennsylvania, "[t]o make out a claim of intentional infliction of emotional distress, the plaintiff must show conduct so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be intolerable in a civilized community." Id. at 683 (internal quotations omitted).

Here, the outrageous conduct Mr. Watson is grounding his IIED claim on occurred at the November 6, 2003 disciplinary hearing, at the latest. The playing of the recorded telephone conversations in his presence clearly put him on notice that a wrong may have been committed against him. In addition, the discovery rule does not apply to the facts of this case. By Mr. Watson's own admission, he should have known at the November 2003 disciplinary hearing that he may have suffered from a type of emotional distress injury. On that date he was "publicly humiliated," his "mental health immediately began to deteriorate," and "[t]he Plaintiff immediately began to loose [sic] mental stability." Pl.'s Mot. for Recons. at 6. Although the counseling may have been helpful in treating his alleged emotional distress, he should have been aware of the injury's existence on

November 6, 2003. No evidence is presented that could lead this court to conclude Mr. Watson was unable to recognize the alleged wrong or the resulting injury on November 6, 2003.

As I held in my August 22nd Order, Mr. Watson's claims accrued on November 6, 2003, at the latest. Mr. Watson filed his complaint on February 28, 2006, at the earliest. Therefore, Mr. Watson's IIED claim is time barred by the applicable two-year statute of limitations.

B. Equitable Tolling and the Statute of Limitations

Mr. Watson also argues in his motion for reconsideration that the statute of limitations for each of his claims should have been tolled due to the Philadelphia Prison System ("PPS") not responding to three grievances he filed with them between November 2003 and March 2004. He claims PPS intentionally failed to respond because they were fraudulently concealing vital information for his claims.

Again, Mr. Watson attempts to offer previously available evidence to defeat this court's August 22nd Order. This evidence and argument also fail. Mr. Watson is not offering new evidence that has just become available. Mr. Watson was well aware of any action PPS took or failed to take with respect to him when he filed his complaint and responded to the defendants' Rule 12(c) motion. A motion for reconsideration is not the proper vehicle to present this "old" evidence to the court. In addition, much like his argument in his Rule 12(c) response that his involvement in another case should toll the

statutes of limitations, he does not set forth any facts or legal arguments as to why a hold up in an internal grievance process prevented him from filing the present suit.

#### **IV. CONCLUSION**

Accordingly, I will deny the plaintiff's motion for reconsideration. An appropriate Order follows.

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<b>CITY OF PHILADELPHIA, et al.,</b>	:	
<b>Defendants.</b>	:	
	:	

**ORDER**

**AND NOW**, this 28th day of September, 2006, upon consideration of Plaintiff's Motion for Reconsideration (Docket No. 24) and the responses thereto, it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.