

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DOMINIQUE DEWAYNE GULLEY-FERNANDEZ,
Plaintiff,

v.

Case No. 15-C-795

**DR. TRACY JOHNSON,
DAVID GARDNER,
WARDEN GARY BOUGHTON,
CHRISTA K. MORRISON,
DR. SHIRLEY DAWSON, and
DR. DAWN LANDERS,**
Defendants.

ORDER

Plaintiff is a Wisconsin state prisoner representing herself. On May 25, 2018, I granted defendants' motion for summary judgment, denied several of plaintiff's motions, and dismissed this case. Judgment was entered on the same day. Plaintiff has filed a motion to amend judgment (ECF No. 186) and a motion to alter or amend judgment (ECF No. 189).

In her motion to amend judgment, plaintiff states that she never received her copy of the video deposition from her September 22, 2017 deposition; that she did not respond to defendants' proposed findings of fact because she never received a copy of them; and that she "never received any filings from the defendants for oppositions or motion for relief/summary judgment[.]" (ECF No. 186 at 2.) Plaintiff requests that I send her copies of these items and then allow her enough time to read and respond to them, and to file her own proposed findings of fact and summary judgment motion.

Defendants contend that plaintiff's claims are incredible. (ECF No. 187.) According to defendants, plaintiff received a copy of her deposition transcript with their summary judgment filings. Defendants point out that plaintiff's January 12, 2018 reply to her motion for injunctive relief references Defendants' Proposed Findings of Fact. (See ECF No. 181.) According to defendants, plaintiff was well-aware of the applicable rules and court-imposed deadlines in this case.

Plaintiff filed a reply in which she states that, upon review her records and files, she did receive a copy of her deposition transcript and she does have a copy of defendants' proposed findings of fact. (ECF No. 188.) Plaintiff now states that she would like the court to allow her another chance to respond to defendants' proposed findings of fact, that she did not receive portions of defendants' summary judgment motion, and that she did not know about her response deadline. Plaintiff states that she was completely unaware of any applicable rules and the court-imposed deadlines to respond to summary judgment.

In her motion to alter and/or amend judgment, plaintiff contends that defendants did not produce any factual evidence to show that her allegations of having symptoms of gender identity disorder are false. (ECF No. 189.) According to plaintiff, she does in fact have some signs and symptoms of gender identity disorder. Plaintiff also states that defendants have not produced any factual evidence to show that her claims of harassment, physical assaults, and discrimination are false. Next, plaintiff states that the package that her deposition transcript came in was not opened in her presence and several documents/pages are missing "including a copy of the defense cross-motions for summary judgment findings." (*Id.* at 1.) Plaintiff requests that the court provide her with

a copy of “defendants’ motion for summary judgment findings” and allow her thirty days to respond to their summary judgment motion. Plaintiff reiterates that she was completely unaware of any applicable rules and the court-imposed deadlines.

“Rule 59(e) allows a court to alter or amend a judgment only if the petitioner can demonstrate a manifest error of law or present newly discovered evidence.” *Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008) (citing *Sigsworth v. City of Aurora*, 487 F.3d 506, 511-12 (7th Cir. 2007)). “A ‘manifest error’ is not demonstrated by the disappointment of the losing party. It is the ‘wholesale disregard, misapplication, or failure to recognize controlling precedent.’” *Oto v. Metropolitan Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) (citations omitted). Under Rule 60(b), a court may grant a party relief from an order for several reasons, including mistake, excusable neglect, newly discovered evidence, and fraud. See Fed. R. Civ. P. 60(b)). “Rule 60(b) relief is an extraordinary remedy and is granted only in exceptional circumstances.” *Cincinnati Ins. Co. v. Flanders Elec. Motor Serv., Inc.*, 131 F.3d 625, 628 (7th Cir. 1997).

Plaintiff has not satisfied the standards Rule 59(e) or Rule 60(b). To the extent that plaintiff contends that defendants did not provide factual evidence to support the motion for summary judgment, she is mistaken. Plaintiff’s June 11, 2018, motion to alter or amend judgment simply expresses her disagreement with the court’s decision and reiterates her disagreement with medical professionals’ determinations to not diagnose her with gender identity disorder and with prison officials’ decision to keep her at the Wisconsin Secure Program Facility. Plaintiff’s disagreement with my decision that defendants met their burden at summary judgment is not a sufficient basis for me to grant plaintiff’s motion.

Plaintiff also states that she may not have received all the documents that defendants filed in support of their motion for summary judgment. Plaintiff initially stated that she did not receive a copy of her video deposition transcript or the defendants' proposed findings of fact, but later stated that she had in fact received those filings. Now she states that the deposition transcript was not opened in her presence, that some unspecified pages were missing, and that she did not receive a copy of the defense cross-motion for summary judgment findings. Plaintiff also states that she was unaware of the deadline for responding to defendants' motion for summary judgment.

Plaintiff's assertions appear to be an attempt to prolong this case and her filings in this case do not support her assertions. Defendants filed their motion for summary judgment on November 28, 2017. On December 6, 2017, I issued an order stating that plaintiff's response to defendants' motion was due by December 28, 2017. (ECF No. 170.) On December 15, 2017, plaintiff filed a motion for summary judgment in which she argued for an order dismissing defendants' motion for summary judgment and dismissal of defendants Gardner and Morrison based on alleged perjury in their summary judgment filings. Plaintiff responded to defendants' motion for summary judgment and the record contradicts her contention that she did not know of her deadline to respond. Moreover, plaintiff had ample opportunity to notify the court that she did not receive all the defendants' summary judgment materials and she did not do so.

For the reasons stated, **IT IS ORDERED** that plaintiff's motion to vacate judgment (ECF No. 186) is **DENIED**.

IT IS FURTHER ORDERED that plaintiff's motion to alter/amend judgment (ECF No. 189) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 1st day of November, 2018.

s/Lynn Adelman _____
LYNN ADELMAN
United States District Judge