

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MICHAEL A. MCGUIRE,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:11-CV-1027-WKW
)	
CITY OF MONTGOMERY, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff's Motion to Alter or Amend the Judgment (Doc. # 119), brought pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, is before the court. For the reasons stated below and in the court's Memorandum Opinion and Order addressing Defendants' motions to dismiss (Doc. # 112), Plaintiff's motion (Doc. # 119) is due to be DENIED.

There is no clear error, manifest injustice, or newly discovered evidence justifying Rule 59(e)¹ relief. Plaintiff's motion fails to appreciate the difference between substantive due process and procedural due process. Moreover, only

¹ Nor is Rule 59(e) the proper vehicle for a challenge to the court's order, which was not a final judgment. *See* Fed. R. Civ. P. 54(b) (providing that an order adjudicating "fewer than all the claims" is not a final judgment); Fed. R. Civ. P. 60(b) (setting out grounds on which a court may grant relief from a final judgment, order, or proceeding). But even assuming Plaintiff brought his motion under Rule 60, it would still fail. Clear error and manifest injustice are "other reason[s]" justifying relief generally, Fed. R. Civ. P. 60(b)(6), but they do not exist here.

violations of constitutional rights – not state law, such as for violation of state laws guaranteeing procedural due process – can support claims for relief under 42 U.S.C. § 1983. States are free to set a higher bar than does the federal Constitution, but their doing so does not create a federal claim from a violation of state law.

And contrary to Plaintiff's assertions, the court did not ignore his substantive due process claims premised on the right to travel and the right to marry. The court acknowledged that a constitutional claim premised on the right to travel could exist, but that *this Plaintiff* did not plead the claim. (*See* Doc. # 112 at 25 (“Plaintiff does not allege that he is treated differently from nonresident sex offenders, and most importantly, he does not allege that the permit requirement has prevented him from leaving the state.”).) Additionally, the court considered Plaintiff's argument premised on the fundamental right to marriage but reasoned that the Constitution does not guarantee Plaintiff the right to live “where his wife does.” (Doc. # 119); *see also Doe v. Miller*, 405 F.3d 700, 711 (8th Cir. 2005) (rejecting registrants' claim that residency restrictions imposed incident to registration violated their constitutional rights related to marriage and family).

Plaintiff, in the alternative, asks for leave to amend his complaint. For the reasons stated in the court's Memorandum Opinion and Order (Doc. # 112 at 40–41), it is ORDERED that Plaintiff's alternative motion for leave to amend (Doc. # 119)

is DENIED.

The parties' joint Motion to Stay Obligations Under Rule 26(f) is also before the court. (Doc. # 118.) Because the court has denied Plaintiff's Rule 59(e) and alternative Rule 15 motion, there is not good cause to stay the parties' obligations under Rule 26(f). Therefore, it is ORDERED that the parties' motion (Doc. # 118) is DENIED. Plaintiff's attempts did, however, complicate the parties' efforts to meet and confer. Accordingly, it is ORDERED that the deadline set out in the court's order of April 8, 2013 (Doc. # 114), is extended from **April 29, 2013**, to **May 6, 2013**.

DONE this 29th day of April, 2013.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE