

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

ROY L. DENTON,)	
)	
Plaintiff,)	
)	1:07-CV-211
v.)	
)	Chief Judge Curtis L. Collier
STEVE RIEVLEY)	
)	
Defendant.)	

ORDER

Before the Court is Plaintiff Roy L. Denton’s (“Plaintiff”) motion to reconsider (Court File No. 57), requesting the Court reconsider its order partially granting Defendant Stevel Rievley’s (“Defendant”) motion for summary judgment (Court File No. 52). Defendant filed a response (Court File No. 61) and Plaintiff replied (Court File No. 63). For the reasons explained below, Plaintiff’s motion to reconsider (Court File No. 57) is **DENIED**.

Plaintiff files his motion to reconsider under Rule 60(b) of the Federal Rules of Civil Procedure. “[T]he party seeking relief under Rule 60(b) bears the burden of establishing the grounds for such relief by clear and convincing evidence.” *Info-Hold, Inc. v. Sound Merchandising, Inc.*, 538 F.3d 448, 454 (6th Cir. 2008).

Plaintiff argues he is entitled to relief under Federal Rule of Civil Procedure Rule 60(b), because of new evidence indicating Defendant convinced this Court he had probable cause through a “complex fraudulent scheme involving manipulation of police reports, affidavits and fraudulent representations . . .” (Court File No. 58). In addition, Plaintiff makes several legal and factual assertions related to the merit of his previously dismissed claim. Defendant argues Plaintiff’s motion does not contain any specific facts which would support relief under Fed. R. Civ. P. 60(b)

and also makes several arguments related to the merit of Plaintiff's dismissed claim. Because Plaintiff does not distinguish between new evidence and evidence of fraud, this Court will consider his motion under both Rule 60(b)(2) and 60(b)(3).

First, Plaintiff argues the Court should grant the motion for reconsideration on the basis of newly discovered evidence. "A Rule 60(b) motion premised on newly acquired evidence must be accompanied by a showing that the party proffering the new evidence could not, in the exercise of due diligence, have acquired the evidence sooner." *Curry v. Scott*, 249 F.3d 493, 504 (6th Cir. 2001); *see also Satyam Computer Servs., Ltd. v. Venture Global Engineering, LLC*, 323 F.App'x 412, 427 (6th Cir. 2009). Plaintiff has not met this burden.

The evidence offered by Plaintiff in support of his motion are of two categories: 1) "new evidence" in the form of affidavits from himself, his wife, his son, and Jessica Carbajal; and 2) "old evidence" in the form of a copy of Defendant's Answer (Court File No. 4) and an excerpt from Defendant's response to Plaintiff's request for admission. None of this evidence satisfies the Plaintiff's burden. Plaintiff has not shown why he "could not, in the exercise of due diligence, have acquired" the affidavits prior to the Court's decision on the motion for summary judgment. Indeed, Plaintiff addressed evidence from each of these sources in his argument against summary judgment and was certainly aware of the existence of these sources. Though the affidavits are newly minted, the sources of those affidavits are not new, and the burden is on Plaintiff to show why he could not have obtained these affidavits sooner. In addition, Defendant's filings were in Plaintiff's possession at the time he made his arguments in the motion for summary judgment and are not "new evidence."

Second, Plaintiff argues the Court should grant the motion for reconsideration on the basis

of fraud. The only basis on which an allegation of fraud could rest is Brandon Denton's new affidavit, in which the affiant claims he never told Defendant his father assaulted him. Even if believed, this affidavit does not rise to the level of clear and convincing evidence of fraud. The affidavit is directly contradicted by the affiant's own handwritten statement made on the night of the alleged false arrest. Critically, Plaintiff does not contend the earlier handwritten statement was forged.

The remainder of Plaintiff's evidence of fraud only seeks to discredit Defendant's claims, which may have shed light on the issue of probable cause during summary judgment if brought forward in a timely manner, but does not show by clear and convincing evidence Defendant fraudulently misled the Court.

Therefore, Plaintiff's motion to reconsider (Court File No. 57) partial grant of summary judgment is **DENIED**.

SO ORDERED.

ENTER:

/s/ _____
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE