

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

GORDON GARRISON,
Plaintiff,

vs.

NEW FASHION PORK LLP; and BWT
HOLDINGS LLLC,
Defendants.

No. 18-CV-3073-CJW-MAR

ORDER

I. INTRODUCTION

This matter is before the Court on plaintiff's Request for a New Trial Pursuant to Federal Rule of Civil Procedure 59(a)(2) ("Request for a New Trial"). (Doc. 103). Defendants timely resisted plaintiff's Request for a New Trial (Doc. 106) and plaintiff timely filed a reply (Doc. 107). For the following reasons, plaintiff's Request for a New Trial is **denied**.

The Court has laid out the factual background and procedural history of this case in significant detail in several of the Court's previous memoranda, including in the Court's recent summary judgment order. (Doc. 99, at 2-6). It is thus unnecessary to repeat the extensive and lengthy factual background and procedural history again here. In short, however, this matter has been in litigation for more than a year during which time plaintiff's complaint has gone through numerous iterations. On January 3, 2020, defendants moved for summary judgment on plaintiff's Clean Water Act ("CWA") claim, Resource Conservation and Recovery Act ("RCRA") claim, and Iowa Code § 459.312 claim. (Doc. 68, at 1). Defendants asked the Court to decline exercising supplemental jurisdiction over the remaining state law claims. (*Id.*). On March 27, 2020, the Court granted defendants' Motion for Summary Judgment. (Doc. 99). The Court found

plaintiff had not produced any evidence from which a reasonable fact finder could find defendants' violations were current and ongoing, and thus, plaintiff's CWA and RCRA claims could not be sustained. (*Id.*, at 9). The Court declined to exercise supplemental jurisdiction over the remaining state law claims. (*Id.*, at 18). Here, plaintiff asks the Court to enter an order opening the March 27, 2020 summary judgment order to consider additional evidence and amend the prior findings of fact and conclusions of law. (Doc. 103, at 2).

II. APPLICABLE LAW

Plaintiff requests a new trial under Federal Rule of Civil Procedure 59(a). (Doc. 103, at 1). Federal Rule of Civil Procedure 59(a)(2) states in relevant part:

(2) Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

FED. R. CIV. P. 59(a)(2). Rule 59(a) does not apply here because this case was disposed of on summary judgment instead of by a jury or non-jury trial. *Taylor v. Knapp*, 871 F.2d 803, 805 (9th Cir. 1989); *see also Cline v. Hoogland*, 518 F.2d 776, 778-79 (8th Cir. 1975) (finding that Rule 59(a) was inapplicable to summary judgments because there had been no findings of fact or trial).

Rather, the Court should consider plaintiff's motion under Rule 59(e) instead. *Innovative Home Health Care, Inc. v. P.T.-O.T. Assocs. of the Black Hills*, 141 F.3d 1284, 1286 (8th Cir. 1998) (stating plaintiff's motion for rehearing or relief from judgment on summary judgment was functionally a Rule 59(e) motion, regardless of how the motion is styled); *Taylor*, 871 F.2d at 805 ("A motion for reconsideration of summary judgment is appropriately brought under either Federal Rule 59(e) or Federal Rule 60(b)."). Rule 59(e) states, in its entirety: "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." FED. R. CIV. P. 59(e).

“Rule 59(e) permits a court to alter or amend a judgment, but it ‘may not be used to litigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.’” *Schultz v. Southwest Credit Sys., LP*, No. 16-CV-2033-LRR, 2018 WL 3398139, at *1 (N.D. Iowa July 12, 2018) (quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008)). “Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence.” *Id.* (quoting *Arnold v. ADT Sec. Servs., Inc.*, 627 F.3d 716, 721 (8th Cir. 2010)). To succeed on a Rule 59(e) motion:

the movant must show that (1) the evidence was discovered after trial; (2) the movant exercised due diligence to discover the evidence before the end of trial; (3) the evidence is material and not merely cumulative or impeaching; and (4) a new trial considering the evidence would probably produce a different result.

United States v. Metro. St. Louis Sewer Dist., 440 F.3d 930, 933 (8th Cir. 2006). District courts have broad discretion in ruling on Rule 59(e) motions. *Schultz*, 2018 WL 3398139, at *1.

III. DISCUSSION

Plaintiff asserts the judgment should be altered because he has presented new evidence of an ongoing violation of the CWA and RCRA. (Doc. 103, at 2). Plaintiff asserts that on April 11, 2020, after the Court had entered its summary judgment order, “Defendants began emptying the Sanderson CAFO pit and applying at least some of the manure on the Sanderson property uphill and directly adjacent to the Garrison farm.” (*Id.*). Defendants contest plaintiff’s assertion and allege they “have not applied manure to the Sanderson property in the calendar year 2020.” (Doc. 106, at 3). Instead, defendants allege plaintiff observed defendants performing other necessary farm work that did not involve spreading manure on the Sanderson farm. (*Id.*). The Court need not, and will not, determine whether defendants spread manure on the Sanderson farm at

any point after summary judgment was entered. Even if defendants did spread manure on the Sanderson property, plaintiff's motion still fails for two reasons.

First, the alleged April 11, 2020 manure application is not newly discovered evidence. "Newly discovered evidence must be of facts existing at the time of trial." 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2808; see also *Alicea v. Machete Music*, 744 F.3d 773, 782 (1st Cir. 2014) (affirming denial of a Rule 59(e) motion following the grant of summary judgment because the party moving for reconsideration alleged "new facts altogether, not new evidence of facts existing *at the time of summary judgment*") (emphasis in original); *Greene v. Gassman*, No. 11-CV-0618 (PJS/TNL), 2014 WL 1775789, at *1 (D. Minn. May 5, 2014) (finding that evidence is newly discovered if the evidence existed at the time that judgment was entered but was not discovered until later). Here, the alleged manure application could not have existed at the time of summary judgment. Summary judgment was entered on March 27, 2020. (Doc. 99). Plaintiff allegedly observed the manure application on April 11, 2020, approximately two weeks after summary judgment was entered. Thus, because the facts did not exist at the time of trial, it is not newly discovered evidence for Rule 59(e) purposes.

Second, the alleged April 11, 2020 manure spread does not provide any evidence of an ongoing violation. Plaintiff concedes that "the amount of manure applied is unknown at this time" and that it is uncertain what harm the manure application caused. (Doc. 103, at 2). The uncertainty about the amount of manure spread and the speculative nature of the resulting harm does not provide the Court with any new evidence of an ongoing violation. Thus, if true, the only thing plaintiff's allegation shows is that defendants spread manure on the Sanderson farm. The Court never found that defendants were prohibited from spreading manure on land adjacent to plaintiff's property in its summary judgment order. The Court also never found that if defendants resumed

spreading manure on the Sanderson farm it would amount to an ongoing and imminent violation. Although the Court found that if defendants resumed spreading manure on the land adjacent to plaintiff's property it could create an imminent and ongoing threat going forward, the Court's finding merely reflected the Court's view that different factual circumstances could give rise to a potential CWA or RCRA claim in the future. (Doc. 99, at 13). Thus, because resumed spreading does not itself provide evidence of an ongoing violation and because plaintiff cannot show the amount of manure applied or any resulting damages, any alleged incident of resumed spreading does not provide any new evidence or basis to amend the judgment.

Thus, plaintiff has not presented any new evidence and any evidence it claims to have produced is entirely speculative and would not give rise to a different outcome. For these reasons, plaintiff's Motion for a New Trial (Doc. 103) is **denied**.

IT IS SO ORDERED this 5th day of May, 2020.



C.J. Williams
United States District Judge
Northern District of Iowa