

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Docket No. 217-2020-CV-00026

DAVID MEEHAN

V.

NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.

THIS PLEADING RELATES SOLEY TO DAVID MEEHAN'S INDIVIDUAL CASE

DEFENDANT'S OBJECTION TO PLAINTIFF'S MOTION FOR RECONSIDERATION

The Defendants, the New Hampshire Department of Health and Human Services, by and through its counsel, the New Hampshire Department of Justice, respectfully submits this Objection to Plaintiff's Motion to Reconsider, which is really an untimely motion to set aside the jury verdict in this case. *See* Motion for Reconsideration ("Motion") at 3. This request is procedurally improper, untimely, and substantively unfounded for several reasons. In support of its motion, DHHS states as follows:

1. The plaintiff's Motion is procedurally improper because it seeks relief that has never been requested in any prior motion. *See* Order on Document 758 (Nov. 4, 2024) (hereinafter "*Order – Cap*") at 2 (where the Court stated that "plaintiff has been resolute in asking for every form of relief except a new trial de novo on all issues."); *see also* Order on Document 769 (hereinafter, "*Order – PJNOV*") at 10 (where the Court stated, "Plaintiff has asked only for a new trial on the issue of incidents. That request is denied, and is denied again . . ."); Margin Order on Pl.'s Mot. for New Trial as to Number of "Incidents" (October 31, 2024) ("*Order – Incident Trial*") at 3 (where the Court stated "[P]laintiff eschews a new trial. Plaintiff won't ask for a new trial on all issues. Instead, plaintiff wants to keep the

\$38,000,000 award, while resubmitting the evidence to a different jury so that it will find more incidents. This cannot be done.” (*incorporating by reference* “May 22, 2024 Order”).

2. The New Hampshire Superior Court Civil Rules do not permit a party to introduce entirely new forms of relief in a motion for reconsideration. *See Mt. Valley Mall Assocs. v. Municipality of Conway*, 144 N.H. 642, 654-55 (2000) (party cannot raise an issue for the first time in motion for reconsideration when the issue was readily apparent at the time the party initially filed for relief); *Sklar Realty v. Town of Merrimack*, 125 N.H. 321, 328 (a party may not be entitled to judicial review of matters not raised at the earliest possible time). The purpose of a motion for reconsideration is to correct manifest errors of law or fact, not to introduce new claims or requests that could have been raised earlier. *See* N.H. Super. Ct. R. 12(e).
3. Plaintiff has not met this standard. Instead, he is attempting to introduce a new form of relief that was never previously requested or considered despite ample opportunity (and despite overt recommendations by this court)¹ to do so. This is not a proper basis for reconsideration. *See id.*

¹ *See e.g.*, May 22 Order, p. 41 (where the Court stated, *inter alia*, that “a de novo jury trial would be a legally correct result.”); Order on Third Mot. to Ext. Pl.’s Deadline to File Post-Verdict Motions (August 1, 2024) (where the Court stated “As this judge said many times at the June 24 hearing, in the absence of a motion for a new trial, the issuance of a judgment consistent with the State’s Motion To Apply Damages Cap will likely be a ministerial act.”); *Order – Incident Trial* at 3 (where the Court stated “[h]ad plaintiff asked for [a de novo jury trial], it would have been ordered. This was made clear at the post-verdict hearing.”); *Order – PJNOV* (November 1, 2024) at 10-11 (“If plaintiff wants a new trial de novo, he may ask for via a motion for reconsideration So far, at least, the plaintiff has declined to request a new trial de novo on all issue.”); Order on Pl.’s Mot. for New Trial as to Number of “Incidents” (October 31, 2024) (“If plaintiff wants a de novo jury trial, he can move to reconsider[.]”); *Order – Cap* at 10 (where the Court stated that judgment would be made final on November 14, 2024, “[u]nless the plaintiff requests a new trial *de novo*, on all issues[.]”).

This is not the first time that the Court has prompted Plaintiff’s counsel to make certain arguments that had not yet been made. *See e.g.*, May 22, 2024 Order at 7-8 (where the Court made a statement after the verdict “that the verdict form raised questions” and implied that this statement was intended as a prompt to counsel to request further deliberation with respect to the verdict perhaps with further instruction.); *id.*

4. Essentially, Plaintiff is attempting to sneak in an extremely untimely and improper motion to set aside verdict long past the 10-day deadline. *See* N.H. Super. Ct. Civ. R. 43. This motion was filed seven months after the verdict was rendered. The Court gave the parties until July 15, 2024, to file briefs in response to the Court’s May 22, 2024, order and to file any other post-verdict motions they may have wished to file. On July 5, 2024, the Plaintiff moved to extend the filing deadline from July 15 to July 25, 2024. On July 19, 2024, the Plaintiff moved a second time to extend the filing deadline to July 31, 2024. On July 30, 2024, the Plaintiff moved a third time to extend the filing deadline, this time to August 21, 2024. The parties filed their post-verdict memos with briefing concluding on or about September 9, 2024. Simply, the time to file for post-verdict relief has long expired. *See* Super. Ct. R. 43. By waiting seven months post-verdict and submitting briefing on every issue except for requesting a de novo trial, (*see* Order – Damages Cap at 2)² – and, in fact, expressly disclaiming the pursuit of that relief – the plaintiffs have waived their right to seek such relief.
5. Regardless of the captioning of Plaintiff’s improper motion, not only has Plaintiff *not* requested a de novo trial in *any* previously filed motion, (*see* Order – Damages Cap at 2), the order(s) that the plaintiff seeks to have reconsidered were premised on previously made arguments and motions in which the plaintiff explicitly *rejected* the option of a de novo trial.

at 38 (where the court further states in its order that, after instructing the jury on an “incident,” that it “jokingly told the jury that he expected to hear a groan after he gave the instruction” because “the court believed that determining the number of incidents would be laborious.”). It seems that the implication the court hoped the jury would take away from this statement was that it should be finding many “incidents.”); *see also* May 8, 2024 Order (where the Court suggested that additur of incidents may be a “better course” than a new trial.).

² Where the Court stated that “plaintiff has been resolute in asking for every form of relief except a new trial de novo on all issues.”

See e.g., Pl.’s Mot. For PNOV Or, In The Alt., To Set Aside Verdict As To Number Of “Incidents” (filed May 13, 2024) (where the Plaintiff requested a trial on “Incidents” only); Pl.’s Mot. For New Trial As To Number Of “Incidents” (filed August 21, 2024) (where the Plaintiff again requested a trial on “Incidents” only); *see also* Pl.’s Supplemental MOL in Support of (1) Obj. to the State’s Mot. to Apply Damages Cap, (2) Mot. for PJNOV, and (2) [sic] Alt. Mot. to Set Aside Verdict at 9 (where Plaintiff, for the third time requested a trial on “Incidents” only and stated that “. . . **Mr. Meehan does not request (nor agree to) a de novo new trial** on liability and damages (or even just on damages)”) (emphasis added); and Order on Pl.’s Mot. for PJNOV (November 1, 2024) at 11 (“So far, at least, the plaintiff has declined to request a new trial de novo on all issue.”). This prior rejection is a critical fact that undermines the plaintiff’s current request.

6. The New Hampshire Superior Court Civil Rules apply to this plaintiff just as they do to any other. Good cause has never been established to waive them for the Plaintiff, N.H. Super. Ct. Civ. R. 1(c), nor could they be given how many opportunities the Plaintiff has had to seek a new trial de novo. Granting the Plaintiff’s motion under these circumstances would be a manifest abuse of discretion.
7. For the foregoing reasons, the defendants respectfully request that the court deny the plaintiff’s motion for reconsideration. The plaintiff’s request for a de novo trial is procedurally improper, inconsistent with their prior representations, and fails to meet the legal standards for reconsideration under New Hampshire law.
8. Denying a retrial, certifying the verdict in line with the statutory cap, and entering judgment is the most efficient and effective way for various unresolved legal questions to be resolved

by the New Hampshire Supreme Court, including the plaintiff's arguments that the statutory damages cap is unconstitutional.

WHEREFORE, for the reasons set forth in this Motion, DHHS respectfully requests that this honorable Court:

- A. Deny Plaintiff's Motion for Reconsideration; and
- B. Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

State of New Hampshire Department of Health and Human Services; Division of Children, Youth, and Families; and Division of Juvenile Justice Services

By their attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: November 24, 2024

/s/ Brandon F. Chase
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the Court's electronic filing system to all parties of record on the date above.

/s/ Brandon F. Chase
Brandon F. Chase