

**NOTICE**  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2015 IL App (4th) 140974-U  
NO. 4-14-0974  
IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

**FILED**  
October 2, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

KIRK ALLEN,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Edgar County
DEPARTMENT of HEALTHCARE and FAMILY	)	No. 13MR74
SERVICES, and JULIE HAMOS, Acting in Her	)	
Official Capacity as Director of the Department of	)	Honorable
Healthcare and Family Services,	)	Matthew L. Sullivan,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Pope and Justice Holder White concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not abuse its discretion in denying plaintiff's motion to reconsider his complaint for declaratory judgment and injunctive relief where plaintiff failed to identify newly discovered evidence.
- ¶ 2 Plaintiff, Kirk Allen, appeals the trial court's denial of his motion to reconsider his complaint for declaratory judgment and injunctive relief and a second motion relating to a request to admit facts. First, he argues his motion to reconsider should have been granted based on newly discovered evidence. Second, he asserts the trial court should have found defendants, the Department of Healthcare and Family Services (Department), and Julie Hamos, acting in her official capacity as the director of the Department, admitted the facts and genuineness of the documents contained in his request to admit facts. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 27, 2013, plaintiff sent an e-mail to the Department requesting documents pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 to 11.5 (West 2012)). Specifically, plaintiff requested the following:

"1. Cop[ies] of the [r]esume's [sic] for the 13 people working on the MMIS project.

2. Names of the 13 people working on the MMIS project.

3. Cop[ies] of all e[-]mails sent from any [Department] employee and/or executive to the Huffington Post in the last two weeks.

4. Cop[ies] of all e-mails sent by any [Department] employee and/or executive to Matt Brown, [c]hief [p]rocurement [o]fficer, or any other employee from the [p]rocurement office in the last 12 months.

5. Cop[ies] of all e-mails received by any [Department] employee and/or executive from Matt Brown, [c]hief [p]rocurement [o]fficer, or any other employee from the [p]rocurement [o]ffice in the last 12 months."

¶ 5 On October 3, 2013, the Department responded to plaintiff by e-mail, informing him that it had contacted the Illinois Department of Central Management Services (CMS) to fulfill his request for copies of e-mails. The Department also requested plaintiff identify a domain name for the Huffington Post and specific names of employees in the procurement office other than Matt Brown. That same day, plaintiff responded to the Department, providing the domain name for the Huffington Post and noting he had no names other than Matt Brown.

¶ 6 On October 7, 2013, the Department responded to plaintiff's FOIA request by providing the names and resumes of the 13 people working on the MMIS project, but pursuant to section 3(e) of FOIA (5 ILCS 140/3(e) (West 2012)), it extended the time to respond to plaintiff's requests for copies of e-mails for five business days so it could consult with another public body that had a "substantial interest" in the subject matter of plaintiff's request. On October 15, 2013, the Department sent plaintiff an e-mail, noting there were no documents responsive to his request for e-mails sent to the Huffington Post. In addition, the Department informed plaintiff responsive documents existed regarding his requests for e-mails between Department employees and Matt Brown or other employees in the procurement office, but it noted it needed additional time to respond. The Department stated it could respond by October 22, 2013, and plaintiff agreed.

¶ 7 On October 23, 2013, the Department responded to plaintiff's FOIA request for e-mails between Department employees and Matt Brown or other employees in the procurement office. The Department indicated CMS had provided it with 245 electronic communications, many of which were not responsive to plaintiff's request, and therefore, not included in the Department's response. The omitted e-mails included electronic calendar appointment notices and e-mails exchanged between individuals other than Matt Brown and Department employees. The Department further noted it was withholding other responsive e-mails it considered exempt under section 7(1)(f) of FOIA and notified plaintiff of his right under FOIA to have the denied portions of his request reviewed by the Public Access Counselor or to seek judicial review.

¶ 8 On October 30, 2013, plaintiff filed a complaint for declaratory judgment and injunctive relief in the Edgar County circuit court, requesting the court declare defendants to be in violation of FOIA and enjoin them from continuing to withhold access to nonexempt

documents responsive to his FOIA request. He further requested the court order defendants to produce an affidavit identifying with specificity any records claimed to be exempt from disclosure, and the reasons for such exemption. Last, plaintiff requested the court declare defendants acted willfully, intentionally, and in bad faith in failing to provide responsive documents; order defendants to pay a civil penalty; and award him reasonable attorney fees and costs.

¶ 9 On January 13, 2014, the trial court conducted a hearing on plaintiff's complaint. On January 22, 2014, it entered its written order, finding (1) defendants did not willfully and intentionally fail to comply with FOIA; (2) some documents and parts of documents responsive to plaintiff's FOIA request but withheld by defendants did not qualify for exemption and were produced to plaintiff in court; (3) following their in-court production of documents, defendants had fully complied with FOIA; and (4) plaintiff was entitled to \$140 for court costs plus costs of service.

¶ 10 On February 20, 2014, plaintiff filed a motion to reconsider. According to plaintiff, "[a]fter [the trial court] entered the January 22, 2014, order in this matter, [d]efendants responded to a separate comparable 'FOIA' request, providing Representative Dwight Kay with more than forty (40) additional documents; these documents were willfully withheld from [p]laintiff in [p]laintiff's 'FOIA' request." Plaintiff did not attach or specifically identify any documents or their contents in support of his motion, but he noted he "w[ould] submit all relevant documentation to [the court] upon hearing for the [c]ourt to review." On March 24, 2014, defendants filed a response to plaintiff's motion to reconsider. Defendants asserted plaintiff's motion (1) simply repeated arguments previously raised at the earlier hearing and (2)

failed to set forth newly discovered evidence which warranted reconsideration. Plaintiff did not set his motion to reconsider for hearing.

¶ 11 On July 11, 2014, plaintiff mailed to defendants a request to admit facts and the genuineness of documents (request to admit facts). Attached to plaintiff's request to admit facts was an exhibit consisting of the Department's written response to Representative Kay's January 22, 2014, FOIA request, to which was attached 81 pages of e-mails. According to the Department's response, Representative Kay's FOIA request sought the following:

"1. Cop[ies] of e[-]mails sent from any [Department] employee and/or executive to the Huffington Post in the month of September 2013.

2. Cop[ies] of all e[-]mails sent by any [Department] employee and/or executive to Matt Brown, [c]hief [p]rocurement [o]fficer in the last sixteen (16) months to present.

3. Cop[ies] of all e[-]mails received by any [Department] employee and/or executive from Matt Brown, [c]hief [p]rocurement [o]fficer in the last sixteen (16) months to present."

Plaintiff requested defendants admit the e-mails sent to Representative Kay were "true, accurate, genuine and authentic" copies of the Department's records.

¶ 12 On July 17, 2014, defendants responded to plaintiff by letter, objecting to his request to admit facts for the following reasons: (1) a final order had been entered in the case, and therefore, no pending matter existed for which plaintiff could issue discovery, or alternatively, asserting discovery of this type was not appropriate in a FOIA case; (2) the Department was unable to adequately or accurately answer his request with a simple "admit" or

"deny" because "the request contain[ed] multiple parts," and "was vague and incomprehensible"; (3) the request was irrelevant to plaintiff's FOIA request; and (4) plaintiff's request failed to meet the requirements of Illinois Supreme Court Rule 216(g) (eff. July 1, 2014).

¶ 13 On August 14, 2014, plaintiff filed a "motion for finding that the defendants have admitted the facts and genuineness of the matters contained in the request to admit facts filed by the plaintiff or in the alternative to compel a response thereto." Plaintiff asserted that defendants failed to admit, deny, or otherwise state they were unable to admit or deny the facts requested, or file a written objection within 28 days as required by Rule 216. Specifically, plaintiff contended defendants' July 17, 2014, letter was not a proper response. On August 22, 2014, defendants filed a motion to strike plaintiff's motion, asserting, in part, their written objection complied with Rule 216.

¶ 14 On October 7, 2014, the trial court conducted a hearing on both plaintiff's motions despite plaintiff not having set his motion for reconsideration for a hearing. The court denied plaintiff's motion for a finding that defendants admitted the facts and genuineness of the matters contained in his request to admit facts due to plaintiff's failure to comply with Rule 216(g). The court found plaintiff's request to admit facts failed to incorporate certain warning language required by Rule 216(g). Regarding plaintiff's motion to reconsider based on newly discovered evidence, the court initially commented on the significant delay in having it heard. It inquired, "[c]an you just file one and leave it in the circuit clerk's office and do nothing with it \*\*\*?" Nonetheless, the court proceeded to hear the parties' arguments. Thereafter, it denied plaintiff's motion to reconsider.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, plaintiff argues the trial court erred in denying his motion to reconsider and his motion filed on August 14, 2014. We confine our discussion to the court's denial of plaintiff's motion to reconsider as our decision relative to this motion is dispositive of the appeal.

¶ 18 A. Motion To Reconsider

¶ 19 Plaintiff argues the trial court erred in denying his motion to reconsider based on newly discovered evidence.

¶ 20 "The purpose of a motion to reconsider is to bring to the trial court's attention (1) newly discovered evidence not available at the time of the hearing, (2) changes in the law, or (3) errors in the court's previous application of existing law." *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 324, 943 N.E.2d 752, 758 (2010) (quoting *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1140, 815 N.E.2d 476, 481 (2004)). "When a movant seeks reconsideration based on newly discovered evidence, 'a party must show that the newly discovered evidence existed before the initial hearing but had not yet been discovered or was otherwise unobtainable.'" *Id.* (citing *Stringer*, 351 Ill. App. 3d at 1141, 815 N.E.2d at 481). Further, the newly discovered evidence must be material and so conclusive that it would probably change the result of the court's order. *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 409, 822 N.E.2d 596, 603 (2005). "A trial court's decision to grant or deny a motion to reconsider lies within its sound discretion, and this court will not disturb such a ruling absent an abuse of discretion." *Simmons*, 406 Ill. App. 3d at 324, 943 N.E.2d at 758 (citing *Stringer*, 351 Ill. App. 3d at 1141, 815 N.E.2d at 481). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173, 824 N.E.2d 177, 289 (2005).

¶ 21 Here, plaintiff asserts the additional documents provided by the Department to Representative Kay in response to Kay's FOIA request constitute newly discovered evidence not available to him prior to the hearing on his complaint. He contends the additional documents show the Department "falsely represented to [p]laintiff and to the [c]ircuit court that [d]efendants had provided all relevant documents not qualifying for exemptions pursuant to [p]laintiff's FOIA request."

¶ 22 We find plaintiff's motion to reconsider was properly denied as plaintiff failed to identify the new evidence upon which he based his motion. As noted, the motion to reconsider referred generally to "additional documents" provided by defendants to another FOIA requestor which were "wrongly withheld" from plaintiff. However, plaintiff failed to specifically identify the documents or attach them as exhibits to the motion to reconsider. Instead, he indicated he would "submit all relevant documentation to this court upon hearing for the court to review." When the motion to reconsider proceeded to hearing, plaintiff again failed to identify any specific documents for the court to consider as newly discovered evidence. Thus, at no point was the trial court directed to any specific evidence relating to defendants' response to Representative Kay's FOIA request. Further, plaintiff only attached the documents produced to Representative Kay as an exhibit to his request to admit facts. He cannot now rely on an exhibit he did not incorporate as part of his motion to reconsider, either directly or by reference, in arguing the trial court erred in denying his motion. In the absence of any identified "newly discovered" evidence, the court's decision to deny plaintiff's motion to reconsider was not an abuse of discretion.

¶ 23 We note that even if we were to consider the documents produced by defendants to Representative Kay, our decision would be the same. Although plaintiff refers to Kay's FOIA



request as "comparable" to his own, it is apparent the two are fundamentally different as they specify different periods of time. Representative Kay's request covers a significantly longer period of time than plaintiff's request. Thus, we cannot conclude defendants did not comply with plaintiff's FOIA request, even though more documents were produced in response to Representative Kay's request.

¶ 24 B. Motion for Finding Defendants Admitted the Genuineness of Documents of the Matters Contained in the Request To Admit Facts, or in the Alternative, To Compel a Response

¶ 25 Given that the trial court correctly denied plaintiff's motion to reconsider, we need not consider the issue plaintiff raises regarding the "motion for finding defendants admitted the genuineness of documents of the matters contained in the request to admit facts, or in the alternative, to compel a response" filed on August 14, 2014.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the trial court's judgment.

¶ 28 Affirmed.