UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Shari Guertin, Shari Guertin as next friend of her child, E.B., a minor, and Diogenes Muse-Cleveland,

Plaintiffs,

v.

State of Michigan, Richard Snyder, Michigan Department of Environmental Quality, Michigan Department of Health and Human Services, City of Flint, Howard Croft, Michael Glasgow, Darnell Earley, Gerald Ambrose, Liane Sheckter-Smith, Daniel Wyant, Stephen Busch, Patrick Cook, Michael Prysby, Bradley Wurfel, Eden Wells, Nick Lyon, Nancy Peeler, Robert Scott, Veolia North America, LLC, and Lockwood, Andrews & Newnam, Inc.,

Defendants.

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Case No. 16-cv-12412

Judith E. Levy
United States District Judge

Mag. Judge Mona K. Majzoub

OPINION AND ORDER DENYING THE MDEQ EMPLOYEE DEFENDANTS' MOTION FOR RECONSIDERATION [116]

On January 23, 2017, the Court denied the MDEQ Employee Defendants' motion for change of venue. (Dkt. 113.) They now move for reconsideration, arguing that correcting the Court's "palpable defects" will result in a different disposition. (*See* Dkt. 116.) First, according to these defendants, the Court erred when it found that "it seems likely that by the time trial commences, 'the decibel level of media attention' will have 'diminished somewhat.'" (*Id.* at 6-8.) Second, they argue that most of the defendants, witnesses, and documentary evidence are not located in the Eastern District of Michigan. (*Id.* at 8-10.)

To prevail on a motion for reconsideration under Local Rule 7.1, a movant must "not only demonstrate a palpable defect by which the court and the parties and other persons entitled to be heard on the motion have been misled but also show that correcting the defect will result in a different disposition of the case." E.D. Mich. LR 7.1(h)(3). "A palpable defect is a defect that is obvious, clear, unmistakable, manifest or plain." *Witzke v. Hiller*, 972 F. Supp. 426, 427 (E.D. Mich. 1997). The "palpable defect" standard is consistent with the standard for amending or altering a judgment under Fed. R. Civ. P. 59(e).

Henderson v. Walled Lake Consol. Schs., 469 F.3d 479, 496 (6th Cir. 2006).

Motions for reconsideration should not be granted if they "merely present the same issues ruled upon by the court, either expressly or by reasonable implication." E.D. Mich. LR 7.1(h)(3). But "parties cannot use a motion for reconsideration to raise new legal arguments that could have been raised before a judgment was issued." *Roger Miller Music, Inc. v. Sony/ATV Publ'g,* 477 F.3d 383, 395 (6th Cir. 2007). Notably, district courts are increasingly scrutinizing improper use of motions to reconsider. *See, e.g.*, *Andersons, Inc. v. Consol, Inc.*, 208 F. Supp. 2d 847, 850 (N.D. Ohio 2002) ("Like the court in *Nationwide*, I have 'noticed a recent marked increase in the filings of motions to reconsider.' Also like that court, I hope that 'publication of this Opinion and Order will advise the bar that the undersigned intends to begin issuing show cause orders as to why sanctions should not be imposed for improper filings of motions to reconsider.'") (quoting *Nationwide Mut. Fire Ins. Co. v. Huynh Pham*, 193 F.R.D. 493, 495 (S.D. Miss. 2000)).

As to the MDEQ Employee Defendants' first argument, they "merely present the same issue[] ruled upon by the court." *See* E.D.

Mich. LR 7.1(h)(3). Plaintiffs raised the issue in their response brief. (Dkt. 94 at 17-18 ("The shelf life of publicity is notably short and the conditions at the time of trial in this case which will not occur for some time will likely be significantly different than that surveyed by MDEQ Defendants' proffered expert. . . . *Skilling* [*v. United States*, 561 U.S. 358, 383 (2010)] (noting that the decibel level of media attention diminishes over time).").) And the MDEQ Employee Defendants replied that "[w]hile national coverage has waned, adverse local coverage continues to grow daily with no signs of relenting, as does the prejudice held by this Court's jury pool." (Dkt. 109 at 6.) They repeat the argument in their motion to reconsider. (*See* Dkt. 119 at 6-8.) Thus, this is an improper ground on which to move for reconsideration. *See* E.D. Mich. LR 7.1(h)(3).

As for their second argument, the MDEQ Employee Defendants "could have [] raised" the argument "before a judgment was issued," but did not. *See Roger Miller Music, Inc.,* 477 F.3d at 395; *see generally* (Dkt. 113 at 17 ("The MDEQ Employee Defendants do not make any arguments as to the multiple factors that must be considered before

granting [] a motion [under 28 U.S.C. § 1404(a)].”)).[1] Thus, this is also an improper ground on which to move for reconsideration. *Id.*

And even if these findings were “obvious[ly], clear[ly], unmistakabl[y], manifest[ly,] or plain[ly]” incorrect, see *Witzke*, 972 F. Supp. at 427, the MDEQ Employee Defendants fail to “demonstrate . . . that correcting the defect will result in a different disposition of the case.” E.D. Mich. LR 7.1(h)(3). That “‘the decibel level of media attention’ will have ‘diminished somewhat’” was only one of the considerations that the Court found weighed against a transfer of venue. (*See* Dkt. 113 at 14-15.) The considerations that were most compelling to the Court weigh against transferring venue at this stage—the local jury pool is large and diverse, and the consideration “of

[1] The MDEQ Employee Defendants argue that attorneys Dennis Egan and Michael Pattwell did not contradict one another regarding whether these defendants are seeking a transfer under 28 U.S.C. § 1404(a). (Dkt. 116 at 9 n.2.) The Court does not see how it could be read another way. Mr. Egan stated at the hearing that “the cases that we’re going to discuss, none of them are analyzing it under a 1404 transfer because a 1404 transfer can’t fly.” (Dkt. 116-3 at 12.) According to Mr. Egan, “a 1404 transfer can’t fly” because “[o]ne of the requirements is it has to be sent to a venue where the case could have been brought,” and “this case could not.” (*Id.*) Mr. Pattwell stated immediately thereafter that in fact “we cite a number of cases in our brief under 1404(a),” specifically under the “interest of justice factor.” (*Id.* at 13.) And in that original brief, the MDEQ Employee Defendants argue that “[t]his action could have been brought in the Western District of Michigan because [d]efendants Wyant and Wurfel, among others, reside there.” (Dkt. 45 at 56 n.32.) In any case, the Court finds that the argument was not waived given Mr. Pattwell’s clarification.

prime significance," according to the Supreme Court, does not apply here because no jury verdict has yet been reached. (*Id.* at 16.)

Finally, even if the MDEQ Employee Defendants are correct that most of the defendants, witnesses, and documentary evidence are not located in the Eastern District of Michigan, the result is the same. The MDEQ Employee Defendants note that those defendants, documents, and witnesses are located in and around Lansing, MI, but they seek to transfer venue to the Northern Division of the Western District or out of state. (*See* Dkt. 116 at 8-10.) To argue that the convenience of the parties and witnesses is served by transferring the case even farther from most of the defendants, documents, and witnesses defies logic. The Court would not have come out the other way had the MDEQ Employee Defendants made this argument when they could have.

Accordingly, their motion for reconsideration (Dkt. 116) is DENIED.

IT IS SO ORDERED.

Dated: February 9, 2017
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on February 9, 2017.

s/Felicia M. Moses
FELICIA M. MOSES
Case Manager