

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

| | | |
|-----------------------------|---|---------------------|
| GREGORY J. BARNES, |) | |
| |) | |
| Plaintiff, |) | CIVIL ACTION |
| |) | |
| v. |) | No. 05-1328-MLB |
| |) | |
| GENETIC TECHNOLOGIES, INC., |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

MEMORANDUM AND ORDER

Before the court are the following:

1. Plaintiff's motion to reconsider (Doc. 98); and
2. Defendant's response (Doc. 99).

By Memorandum and Order of August 14, 2006 (Doc. 96), this court granted defendant's motion for summary judgment on statute of limitation grounds. When the court granted defendant's motion, it was not aware that the magistrate had granted plaintiff's motion for extension of time and had extended the discovery deadline to November 7, 2006.

Under this court's Rule 7.3(a), motions seeking reconsideration of dispositive orders must be filed pursuant to Fed. R. Civ. P. 59(e) or 60. Plaintiff is proceeding pro se. Applying the rule of liberal construction to his motion, the only rule under which the motion would lie is Rule 60(b)(6), any other reason justifying relief from the operation of the judgment. The rule of liberal construction notwithstanding, the court finds that plaintiff's motion to reconsider must be denied.

The submission which gave rise to the magistrate's order was plaintiff's "Request for Extension of Time to Obtain DNA Expert," filed June 8, 2006 (Doc. 71). The submission, in its entirety, states:

COMES NOW, Gregory J. Barnes, Pro Se request that an extension of time to obtain a DNA expert. Due to the extent of research and time the Plaintiff has not had enough time to conduct a thorough search. Mr. Barnes request the court to grant a two (2) week extension to obtain this expert witness.

Thus, it is apparent that the magistrate's reason for granting plaintiff's request (which defendant opposed) was to allow plaintiff additional time to obtain an expert who, even if successfully retained, would not be able to state an opinion bearing in any manner on statutes of limitation issues. Thus, there is no reason for the court to reconsider its Memorandum and Order.

Plaintiff's motion is denied.

IT IS SO ORDERED.

Dated this 30th day of August 2006, at Wichita, Kansas.

s/ Monti Belot

Monti L. Belot

UNITED STATES DISTRICT JUDGE