

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JEROME DAVIS,)
)
 Plaintiff,)
)
 v.) Civil Action No. 06-128 KAJ
)
 UNION PACIFIC RAILROAD)
 COMPANY,)
)
 Defendant.)

MEMORANDUM ORDER

I. INTRODUCTION

Plaintiff Jerome Davis ("Davis"), is a *pro se* litigant who is currently incarcerated at the Nebraska Department of Corrections in Lincoln, Nebraska. He filed this personal injury action in this district on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332. Davis sought, and was given, leave to proceed *in forma pauperis*. In the March 9, 2006, order the Court assessed a \$250.00 filing fee and required Davis to pay an initial partial filing fee of \$1.66. (D.I. 5.)

Davis has filed two motions related to the order. In the first motion, he seeks an extension of time to make payment of the initial partial filing fee. (D.I. 10.) Davis indicates that he is in segregation and is unable to work within the institution. The motion is GRANTED. Davis is given thirty (30) days from the date of this order to pay the initial partial filling fee of \$1.66.

In the next motion (D.I. 11), Davis seeks reconsideration of that portion of the March 9, 2006, order assessing the initial partial filing fee of \$1.66. Because he was

granted leave to proceed *in forma pauperis*, Davis takes exception to the imposition of the \$1.66 initial partial filing fee.

II. STANDARD OF REVIEW

The standard for obtaining relief under Rule 59(e) is difficult for Davis to meet. The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration may be granted if the moving party shows: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice. *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999).

A motion for reconsideration is not properly grounded on a request that a court rethink a decision already made. See *Glendon Energy Co. v. Borough of Glendon*, 836 F.Supp. 1109, 1122 (E.D. Pa.1993). Motions for reargument or reconsideration may not be used "as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided." *Brambles USA, Inc. v. Blocker*, 735 F.Supp. 1239, 1240 (D.Del.1990). Reargument, however, may be appropriate where "the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Brambles USA*, 735 F.Supp. at 1241 (D.Del. 1990) (citations omitted); See also D. Del. LR 7.1.5.

III. DISCUSSION

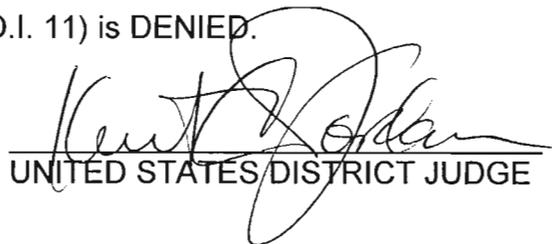
Davis does not argue there was an intervening change in the controlling law or the availability of new evidence that was not available when I issued my order assessing the initial partial filing fee. Nor does he argue that there is a need to correct a clear error of law or fact. The law is clear that pursuant to 28 U.S.C. § 1915(b)(1), a prisoner who brings a civil action and who proceeds *in informia pauperis* shall be shall be assessed the full filing fee and shall be required to pay an initial partial filing fee of 20 percent (20%) of the greater of his average monthly deposit or average monthly balance in his prison trust fund account. In Davis' case that amount is \$1.66. Davis has not demonstrated any of the grounds necessary to warrant reconsideration, and therefore, I am denying his motion.

V. CONCLUSION

IT IS HEREBY ORDERED that:

1. The motion for an extension of time (D.I. 10) is GRANTED. Davis is given thirty (30) days from the date of this order to pay the initial partial filling fee of \$1.66.

1. The motion for reconsideration (D.I. 11) is DENIED.


UNITED STATES DISTRICT JUDGE

May 12, 2006
Wilmington, Delaware