

Responses and Replies

2:04-cv-00417-JES-DNF Gogola v. Zingale et al

U.S. District Court**Middle District of Florida**

Notice of Electronic Filing

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Case Name: Gogola v. Zingale et al**Case Number:** 2:04-cv-417**Filer:** James Zingale**Document Number:** 32**Docket Text:**

RESPONSE to motion *To Reconsider Order of Dismissal* filed by James Zingale. (Lee, Joseph)

The following document(s) are associated with this transaction:

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2:04-cv-417 Notice will be electronically mailed to:

Joseph Hwan-Yul Lee joseph_lee@oag.state.fl.us,

2:04-cv-417 Notice will be delivered by other means to:

Michael S. Gogola
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MICHAEL S. GOGOLA,

CASE NO. 2:04-CV-417

Plaintiff,

v.

JAMES ZINGALE, et al.,

Defendants.

-----/

RESPONSE TO MOTION TO RECONSIDER ORDER OF DISMISSAL.

COME NOW, James Zingale, Executive Director of the Florida Department of Revenue, and the Florida Department of Revenue, specified Defendants in the subject cause, by and through the undersigned counsel, who respond to Plaintiff's Motion to Reconsider Order of Dismissal, and in support thereof, submit the following Memorandum of Law.

MEMORANDUM OF LAW.

The subject motion does nothing more than state disagreement with this Honorable Court's December 16, 2004, Opinion and Order, dismissing the subject cause with prejudice, vis-a-vis (1) that the Court somehow failed to construe Plaintiff's pro se pleadings more liberally than that from attorneys; and (2) Doe v. Pryor, 344 F. 3d 1282 (6th Cir. 1985), was somehow distinguishable. As to the first argument, nothing other than Plaintiff's unsubstantiated contentions support the view that the Court failed to recognize Plaintiff's pro se status in evaluating his pleadings. As to the second

argument, Plaintiff's argument, to wit, that Doe is distinguishable because Doe involved prior reasoned orders and opinions by the state court, which is allegedly lacking sub judice, is patently without merit. The subject motion should be denied. See Fed.R.Civ.P. 59; Scelta v. Delicatessen Support Servs., 89 F. Supp. 2d 1311, 1319 (M.D. Fla. 2000) (three recognized grounds for reconsideration exist: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or manifest injustice; reconsideration of a previous order is an extraordinary measure and should be applied sparingly in the interests of finality and conservation of scarce judicial resources).

Respectfully submitted,

CHARLES J. CRIST, JR.

Attorney General



/s/ Joseph H. Lee

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, was furnished via U.S. Mail to Michael S. Gogola, 2154 Wallace Drive, Waycross, Georgia 31503, on this the 10th day of January, 2005.



/s/ Joseph H. Lee

Joseph H. Lee

Assistant Attorney General