UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHARLIE MEEKS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 4:22-CV-3447**
	§	
HARD'S MARINE SERVICE, LTD.,	§	
	§	
Defendant.	§	
	§	
	§	

MEMORANDUM AND ORDER

This is a retaliation and wrongful termination suit brought under the Seaman's Protection Act. 46 U.S.C. § 2114. Pending before the Court is Plaintiff Charlie Meek's Motion to Alter the Judgment. (Dkt. No. 34.)[1] Based on a thorough review of the motion, arguments, and relevant law, the Court **DENIES** Plaintiff's Motion to Alter the Judgment. (Dkt. No. 34.)

I. BACKGROUND

On October 6, 2022, Charlie Meeks ("Plaintiff") filed an action against Hard's Marine Service, LTD. ("Defendant") under the Seaman's Protection Act ("SPA"), seeking recovery under §§ 2114(a)(1)(A), (B), & (D). (Dkt. No. 1 at ¶ 21.) On February 3, 2023, Plaintiff filed a First Amended Complaint ("FAC"), seeking recovery under §§ 2114(a)(1)(B), (C), & (D). (Dkt. No. 16 at ¶ 22.) On February 20, 2023, Defendant filed a Motion to Dismiss. (Dkt. No. 21.) On August 15, 2023, the Court granted Defendant's Motion to Dismiss. (Dkt. Nos. 32, 33.) Plaintiff filed a Motion to Alter the Judgment on September 12, 2023. (Dkt. No. 34.)

[1] On January 12, 2023, this case was transferred to the Undersigned because the parties consented to proceed before a Magistrate Judge for all proceedings under 28 U.S.C. § 636(c) (Dkt. No. 11).

II. LEGAL STANDARDS

A. Rule 59(e)

A Rule 59(e) motion "calls into question the correctness of a judgment." *Templet v. HydroChem Inc.*, 367 F.3d 473, 478 (5th Cir.2004) (quoting *In re Transtexas Gas Corp.,* 303 F.3d 571, 581 (5th Cir.2002)). The Fifth Circuit has held that Rule 59(e) "motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Id.* at 479. Rule 59(e) serves the 'narrow purpose' of allowing a party to bring errors or newly discovered evidence to the court's attention but it is an 'extraordinary remedy' that should be used sparingly. *Hamilton-Provost v. Astrue*, No. 4:12-cv-2585, 2014 WL 1775506, at *1 (S.D. Tex. May 2, 2014) (citing *In re Rodriguez*, 695 F.3d 360, 371–72 (5th Cir. 2012)).

The Rule 59(e) standard "favors denial of motions to alter or amend a judgment." *S. Constructors Group, Inc. v. Dynalectric Co.*, 2 F.3d 606, 611 (5th Cir. 1993). The district court has considerable discretion in deciding whether to reopen a case under Rule 59(e). *Edward H. Bohlin Co. v. Banning Co*., 6 F.3d 350, 355 (5th Cir. 1993). "The task of the district court in considering a Rule 59(e) motion is to strike the proper balance between two competing interests: the need to bring litigation to an end and the need to render just decisions on the basis of all the facts." *Int'l Marine Carriers v. Oil Spill Liab. Tr. Fund*, 914 F. Supp. 149, 151 (S.D. Tex. 1995).

III. DISCUSSION

Plaintiff seeks reconsideration of the Court's Final Judgment made August 15, 2023. (Dkt. No. 33.) Plaintiff asserts that the Court erred by dismissing Plaintiff's claims under 46 U.S.C. § 2114(a)(1)(C) and (D).[2] (Dkt. No. 34 at 1.)

[2] The contested sections are now codified under 46 U.S.C. § 2114(D) and (E).

A. § 2114 (a)(1)(C)[3]

Plaintiff must allege he "testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law." § 2114 (a)(1)(D).

Plaintiff asserts the Court legally erred by granting Defendant's motion to dismiss under this section based on the Supreme Court's Fair Labor Standards Act ("FLSA") decision in *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1 (2011), and from the context of Plaintiff's text message. (Dkt. No. 34 at 6.) Plaintiff asserts that regardless of the correct procedural process, his text message satisfies the basic requirements under *Kasten*. (*Id.* at 7.)

The *Kasten* standard is used for FLSA cases, not for SPA cases. *Kasten*, 563 U.S. at 1 (holding that the FLSA anti-retaliation provision protects oral as well as written complaints under the law). Plaintiff does not point the Court to a case where the *Kasten* standard has been applied under the SPA. Plaintiff does not allege that there was a proceeding, convened to enforce a maritime safety law or regulation, at which he testified in the FAC. Plaintiff still argues that his text message is an internal complaint and should be considered testifying at a proceeding. (*Id.*; Dkt. No. 22 at 8–10.) While the text message may meet the standard of an internal complaint if this were an FLSA case, it does not meet the type of formalized complaint held sufficient under the SPA to survive a motion to dismiss. *See In the Matter of: Jason B. Meeks, Complainant, v. Genesis Marine, LLC, Respondent.*, 2018 WL 6978222, (DOL Adm.Rev.Bd July 9, 2018). Plaintiff's motion "consists of legal conclusions and opinions, which apply an incorrect standard, [which] is not evidence for the purpose of Rule 59(e)." *Aguirre v. SBC Commc'ns, Inc.*, No. CIV.A. H-05-3198, 2007 WL 4561145, at *4 (S.D. Tex. Dec. 20, 2007), *aff'd*, 299 F. App'x 315

[3] Now § 2114 (a)(1)(D).

(5th Cir. 2008). Plaintiff's effort to expand the standard under the SPA does not assert a manifest error of law.

Plaintiff also submits a new text message to further support his argument that dismissal was improper, but the new text message does not assist in pleading the basic elements of the claim. (Dkt. No. 34 at 8.) Plaintiff uses the new text message as context to support his assertion that the FLSA standard should be used. This new text message would not change the outcome of the motion to dismiss. *See Infusion Res., Inc. v. Minimed, Inc.*, 351 F.3d 688, 696 (5th Cir. 2003) (explaining that a Rule 59(e) motion should not be granted unless the facts discovered would probably change the outcome of the judgment); *Lane v. Target Corp.,* No. C.A. C-05-306, 2007 WL 128904, at *1 (S.D. Tex. Jan.12, 2007) ("Unless the Plaintiff presents new evidence that would change the outcome of the case, the Court should not reconsider its previous judgment."). Dismissal was proper under this section.

B. § 2114 (a)(1)(D)[4]

Here, Plaintiff must allege he "notified, or attempted to notify, the vessel owner or the Secretary of a work-related personal injury or work-related illness of a seaman." § 2114 (a)(1)(E).

Plaintiff asserts the Court erred by granting Defendant's motion to dismiss under this section for two reasons. (Dkt. No. 34 at 4.) First, the Court erred because Defendant first asserted Plaintiff did not plead that he notified or attempted to notify the vessel owner, an element of the claim, in its reply brief; and second, that the Court too narrowly construed the term vessel owner. (*Id.*)

First, Plaintiff's assertion that the Court relied upon Defendant's reply brief to determine it did not plead that Plaintiff notified or attempted to notify the vessel owner is incorrect. Plaintiff

[4] Now § 2114 (a)(1)(E).

asserts the Court violated Rule 12(b)(6) which requires the Court base its determination on "the complaint, its proper attachments, 'documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.'" *Wolcott v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (quoting *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008)). On the face of the FAC, Plaintiff did not assert that he notified or attempted to notify the vessel owner. (Dkt. No. 16 at ¶ 15.) The Court need not look to Defendant's reply brief to determine the elements were not met as Plaintiff now asserts. (Dkt. No. 34 at 4.) Plaintiff seems to imply that his FAC was impenetrable on its face, however, when a complaint fails to plead enough facts to state a claim to relief that is plausible on its face dismissal is proper. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001); *Frith v. Guardian Life Ins. Co.*, 9 F. Supp. 2d 734, 737–38 (S.D. Tex. 1998) (holding that dismissal pursuant to Rule 12(b)(6) "can be based either on a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory").

Plaintiff mischaracterizes the Court's holding by asserting the Court held "Defendant[] was not a vessel owner and thus Plaintiff's reports were not a protected act." (Dkt. No. 34 at 4.) This is incorrect. The Court held Plaintiff did not plead that he notifed or attempted to notify the vessel owner, but only pleaded that he notified his supervisor. (Dkt. No. 32.) This does not meet the elements of the claim. The Court noted that Plaintiff's conclusory equivocation was unsupported by case law, especially in light of being notified Defendant was not the owner. (*Id.*)

Based on Plaintiff's pleadings, the Court cannot properly assume that texting a supervisor is analogous to notifying or attempting to notify the owner of the vessel without case law to support such an assertion. Plaintiff now asserts the Court should have assumed his supervisor was an agent of the owner of the vessel and assume this was sufficient to meet the elements of the claim. Plaintiff did not plead that Clay was an agent of the owner of the vessel in his complaint. In fact, Plaintiff

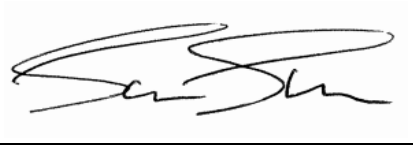
plead that he was told Clay was not the proper party to deliver the information to, and plead no information that he followed through to notify the proper party. Plaintiff alleges no facts for the Court to plausibly presume who the owner of the vessel is. Plaintiff does not cite case law to instruct the Court it should have equivocated texting Clay with notifying or attempting to notify the vessel owner under the Seaman's Protection Act ("SPA"). A court is not bound to accept legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Dismissal was proper here.

Second, Plaintiff asserts the Court erred by applying too narrow of a definition to a vessel owner. (Dkt. No. 34 at 5.) Plaintiff explains that the Court erred because "OSHA has defined the term owner to include 'all of the agents of the owner, including the vessel's master.'" (Dkt. No. 34 at 5 citing CFR 1986.101(q)). Further, Plaintiff explains that because vessel owner is defined more expansively under maritime law the Court erred. (*Id.*) Plaintiff claims that under the OSHA regulation and maritime law it is plausible that texting Clay could be analogous to alerting the owner of the vessel. (*Id.*) Plaintiff does not point the Court to a case where notifying an employee is deemed sufficient for notifying the owner of the vessel such that it meets the elements of a claim under this section. Plaintiff does not point to a case where these definitions have been used to define a vessel owner under the SPA. Advocating for a broader definition is not the manifest legal error properly brought under Rule 59(e). A Rule 59(e) motion "'must clearly establish either a manifest error of law or fact or must present newly discovered evidence' and 'cannot be used to raise arguments which could, and should, have been made before the judgment issued.'" *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863-64 (5th Cir. 2003) (quoting *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990)). The Court declines to make such a broad jump to expand the definition here. Dismissal was proper under this section.

IV. CONCLUSION

Based on the foregoing, the Court **DENIES** Plaintiff's Motion to Alter Judgment (Dkt. No. 34).

SIGNED in Houston, Texas on September 15, 2023.



Sam S. Sheldon
United States Magistrate Judge