

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

|                             |   |                      |
|-----------------------------|---|----------------------|
| RURAL WATER DISTRICT NO. 4, | § |                      |
| DOUGLAS COUNTY, KANSAS,     | § |                      |
|                             | § |                      |
| Plaintiff,                  | § |                      |
|                             | § |                      |
| vs.                         | § | Case No. 07-2463-JAR |
|                             | § |                      |
| CITY OF EUDORA, KANSAS,     | § |                      |
|                             | § |                      |
| Defendant.                  | § |                      |

**DEFENDANT'S MOTION TO STRIKE**

Defendant City of Eudora, Kansas (“the City”) hereby submits its Motion to Strike Plaintiff’s Motion to Reconsider and/or Clarify Order on Defendant’s Rule 50(b) and Rule 59 Motions and Objection to Timeliness of Defendant’s Motions (Doc. #454).

On September 9, 2010, Defendant filed a Second Renewed Motion for Attorney Fees. *See* Doc. #446. On September 10, 2010, the City filed a Motion for Judgment as a Matter of Law under Rule 50(b) or in the Alternative for a New Trial Under Rule 59 (Doc. #449). The City filed its motion based on text orders entered by the Court that the City believed illustrated the lack of a prior final judgment. The Court agreed that these “filings were likely precipitated by text orders entered to terminate motions that had previously been ruled on orally during trial or by written order, and terminating the case as of September 2, 2009, the date of the Order appealed from to the Tenth Circuit.” September 13, 2010 Order (Doc. #453) at 2, fn. 6.

The Court denied both motions. *Id.* at 1-2. Specifically, the Court denied the City’s motion and tried to discourage the filing of any additional motions by holding that:

“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” Accordingly, the Court lacks jurisdiction to entertain the instant motion.

*Id.* at 1-2 (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 59 (1982) (per curiam)). Although (as the Court noted) the City respectfully disagrees regarding the existence of a final judgment, the Court was crystal clear in its belief that it lacks jurisdiction to consider further non-attorney-fee motions. *See* September 13, 2010 Order (Doc. #453) at 1-2 & fn. 5.

Nonetheless, Defendant filed another motion with a 14-page supporting brief eight days after this Court's clear directive. *See* Plaintiff's Motion to Reconsider and/or Clarify Order on Defendant's Rule 50(b) and Rule 59 Motions and Objection to the Timeliness of Defendant's Motions (Doc. #454). Defendant's continued motion practice is especially puzzling given its insistence that "[f]irst and foremost, the September 2, 2009 Order was a final order..." Memorandum in Support of Plaintiff's Motion to Reconsider and/or Clarify Order on Defendant's Rule 50(b) and Rule 59 Motions and Objection to the Timeliness of Defendant's Motions (Doc. #455) at 6. Thus, even though Defendant insists that a final judgment was entered over a year ago, it continues to file motions for which (if that judgment was indeed final) the Court lacks jurisdiction.

The City should not have to address (and the Court should not have to consider) additional motions from Defendant because the Court has already ruled that it lacks jurisdiction to consider such motions. Oral argument is set for November 17 in the Tenth Circuit. As the Court has acknowledged, now is not the time to consider further motions before this tribunal.

WHEREFORE, the City of Eudora, Kansas hereby respectfully requests that the Court strike Plaintiff's Motion to Reconsider and/or Clarify Order on Defendant's Rule 50(b) and Rule 59 Motions and Objection to the Timeliness of Defendant's Motions (Doc. #454) and provide such other and further relief as this Court deems just and proper.

Respectfully submitted:

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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