

STATE OF NORTH CAROLINA
UNION COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 583

WESTON DAVIS,

Plaintiff,

v.

DAVIS FUNERAL SERVICE, INC.;
ROBERT L. MORGAN, III, President
(as an officer of Davis Funeral
Service, Inc.); PHILLIP TILLMAN,
Vice President (individually and as
an officer of Davis Funeral Service,
Inc.); and ROBIN H. MORGAN,
Secretary (as an officer of Davis
Funeral Service, Inc.),

Defendants/Third-
Party Plaintiffs,

v.

DEIDRA TEDDER,

Third-Party
Defendant.

**ORDER ON PLAINTIFF'S
MOTION FOR RECONSIDERATION**

1. In an earlier order, the Court denied Weston Davis's motion for leave to amend his complaint. (*See* ECF No. 60.) Davis now moves for partial reconsideration of that order. (*See* ECF No. 63.) With the benefit of full briefing and a hearing on 12 October 2023, the Court **DENIES** the motion for reconsideration.

2. This case is chiefly an employment dispute. Davis has sued his former employer, Davis Funeral Service, Inc., and its officers. His original complaint includes related claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and quantum meruit. For those claims, Davis seeks to recover damages in the form of "wages unpaid" or, alternatively, "the

reasonable value of services rendered.” The original complaint also includes a claim for defamation with a prayer for compensatory and punitive damages. (*See, e.g.*, Compl. ¶¶ 88, 90, 92–95, 97, 104, 106, ECF No. 3.)

3. The allegations supporting Davis’s contract and quasi-contract claims are uncomplicated. Davis says that he was hired in January 2018 by his cousin, Vann, who was president and sole shareholder at that time. The two negotiated an oral employment agreement. As alleged, Davis became an at-will employee with the title “Vice President” and began managing the funeral service, handling its business operations, and training to become a licensed funeral director. But Davis Funeral Service did not pay Davis all his wages in 2018 and 2019 and did not pay him any wages after the COVID-19 pandemic began in early 2020. When Vann died in September 2020, the administrator of his estate named Davis as president. Davis served in that role for about a year before a new administrator fired him. At that point, Davis sued to recover wages that weren’t paid during his time as “Vice President.” (*See, e.g.*, Compl. ¶¶ 11, 12, 20, 25, 26, 36, 37, 68, 69.)

4. Discovery closed in mid-May 2023. Davis Funeral Service moved for summary judgment in mid-June. After briefing on the motion for summary judgment was complete, Davis moved to amend his complaint to add nearly 150 new allegations. Among other things, the proposed amendment described a radically different oral employment agreement in which Vann supposedly promised to give Davis a five-year term of employment (not at-will employment) and to compensate Davis by making

him the majority shareholder after five years (not by paying him regular wages).^{*} Based on that novel theory, Davis sought to replace his demand for unpaid wages with a much larger demand for the value of the stock that he expected to receive from Vann. Davis also sought to add a new claim for unfair or deceptive trade practices against a new defendant, ostensibly for unfair competition that harmed Davis Funeral Service. (*See, e.g.*, Proposed Am. Compl. ¶¶ 34, 35, 37, 39, 42, 213, 214, 278, ECF No. 54.1.)

5. The Court denied the motion to amend for undue delay, observing that Davis had waited to seek leave until well after the close of discovery and after Davis Funeral Service had moved for summary judgment. Allowing an amendment so late in the case would have “moot[ed] the pending motion [for summary judgment], disrupt[ed] the case schedule, require[d] the discovery period to be reopened, and prejudice[d] opposing parties.” (ECF No. 60 at 2.) Furthermore, the proposed claim for unfair trade practices would have been futile because Davis lacked standing to sue “for alleged harm caused to Davis Funeral Service.” (ECF No. 60 at 2.)

6. Davis offers no persuasive reason to reconsider that order. He advocates what he calls a “slimmed-down” amendment—excising the new defendant and claim for unfair trade practices but retaining over 100 new and revised allegations and new theories of liability—on the ground that it is not the product of undue delay and would not prejudice Davis Funeral Service. (ECF No. 62 at 2–3.) But the Court has already

^{*} Vann also supposedly promised that, if he died before the end of the five-year term, he would leave all his shares to Davis. (*See* Proposed Am. Compl. ¶¶ 40, 41, 47.) That promise, if made, was not fulfilled.

considered arguments about delay and prejudice. The purpose of a motion for reconsideration is not to ask the Court “to rethink” what it has “already thought through—rightly or wrongly.” *DirecTV, Inc. v. Hart*, 366 F. Supp. 2d 315, 317 (E.D.N.C. 2004) (citation and quotation marks omitted); *see also Gunter v. S. Health Partners, Inc.*, 2021 U.S. Dist. LEXIS 108776, at *22 (M.D.N.C. June 10, 2021) (“A motion for reconsideration may not be used to rehash arguments previously made in motions or supporting memoranda.”). It is “to correct a clear error” or to address “new evidence” or a “change in the controlling law”—none of which is present here. *Bohn v. Black*, 2018 NCBC LEXIS 50, at *7 (N.C. Super. Ct. May 16, 2018) (citations and quotation marks omitted).

7. In any event, the Court’s reasons for denying the motion to amend were sound. “[A] trial court may appropriately deny a motion for leave to amend on the basis of undue delay where a party seeks to amend its pleading after a significant period of time has passed since filing the pleading and where the record or party offers no explanation for the delay.” *Rabon v. Hopkins*, 208 N.C. App. 351, 354 (2010).

8. That is exactly the situation here. Davis filed his motion to amend sixteen months after he filed his original complaint, more than two months after the parties completed discovery, and more than a month after Davis Funeral Service moved for summary judgment. *See, e.g., Wilkerson v. Duke Univ.*, 229 N.C. App. 670, 679 (2013) (affirming denial of motion to amend filed over one year after original complaint and after opponent moved for summary judgment); *Wall v. Fry*, 162 N.C. App. 73, 80

(2004) (same); *Draughon v. Harnett Cnty. Bd. of Educ.*, 166 N.C. App. 464, 467 (2004) (same); *Wright v. Com. Union Ins. Co.*, 63 N.C. App. 465, 469 (1983) (same).

9. And he has offered no explanation for his delay. He does not claim to have learned new facts during discovery. Nor could he. His new and revised allegations concern facts known to him long before he filed suit, such as the terms of his employment contract and the nature of the services that he performed for Davis Funeral Service. Indeed, Davis's shifting and contradictory descriptions of his own employment agreement are conspicuously self-serving—especially so given that Vann is deceased and cannot corroborate or refute the allegations. *See, e.g., Micro Cap. Invs., Inc. v. Broyhill Furniture Indus.*, 221 N.C. App. 94, 102 (2012) (affirming denial of motion to amend when claim could have been raised earlier “based on the information known to plaintiff at the time”); *see also Strickland v. Lawrence*, 176 N.C. App. 656, 667 (2006) (same); *KixSports, LLC v. Munn*, 2019 NCBC LEXIS 92, at *4 (N.C. Super. Ct. Jan. 24, 2019) (same); *Brown v. Secor*, 2019 NCBC LEXIS 85, at *4–5 (N.C. Super. Ct. Feb. 18, 2019) (same).

10. The potential prejudice to Davis Funeral Service and the other defendants is obvious. Even when “slimmed down,” the proposed amendment would double the size of the complaint, introduce a brand-new theory of liability at the eleventh hour, and change the measure of damages from unpaid wages to the value of at least 51% of Davis Funeral Service's stock. These additions would necessitate reopening discovery, “greatly change the nature of the defense,” and “greatly increas[e] the stakes of the lawsuit.” *House Healers Restorations, Inc. v. Ball*, 112 N.C. App. 783,

786–87 (1993) (citation and quotation marks omitted); *see also Freese v. Smith*, 110 N.C. App. 28, 33 (1993) (“[T]he addition of a new legal theory may well have changed defendant’s approach to discovery.”).

11. For all these reasons, the Court **DENIES** Davis’s motion to reconsider.

SO ORDERED, this the 25th day of October, 2023.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases