

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 10-2477

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Keith J. Mitan,

Appellant,

v.

J. Dwight McNeil; Midwest  
Intelligence, Inc.; Stephen W. Eoff; D  
& E Plumbing and Heating, Inc.,

Appellees.

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Appeal from the United States  
District Court for the  
Western District of Missouri.

[UNPUBLISHED]

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Submitted: October 26, 2010  
Filed: October 29, 2010

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Before LOKEN, MURPHY, and BENTON, Circuit Judges.

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PER CURIAM.

In this diversity action alleging defamation, Keith Mitan appeals the district court's<sup>1</sup> orders granting two defendants' motion to dismiss and denying Mitan's motions for leave to amend his complaint, to alter or amend the judgment, for additional time to serve two other defendants, for authorization to serve the Missouri Secretary of State, for discovery, and for service by a United States Marshal.

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<sup>1</sup>The Honorable Richard E. Dorr, United States District Judge for the Western District of Missouri.

Having carefully reviewed the record and the parties' submissions on appeal, we agree with the district court that Mitán's complaint failed to state a claim based on respondeat superior as to the two defendants who moved to dismiss, see Schaaf v. Residential Funding Corp., 517 F.3d 544, 549 (8th Cir. 2008); and we also find that court did not abuse its discretion in denying Mitán's post-dismissal motion for leave to amend, because he chose to stand on his pleadings in the face of the motion to dismiss, which identified the very deficiency upon which the court dismissed the complaint, see Hawks v. J.P. Morgan Chase Bank, 591 F.3d 1043, 1050-51 (8th Cir. 2010). The denial of Mitán's final attempt to amend, his Federal Rule of Civil Procedure 59(e) motion for reconsideration, was also not an abuse of discretion. See United States v. Metro. St. Louis Sewer Dist., 440 F.3d 930, 933 (8th Cir. 2006).

As to the unserved defendants, we find that the district court did not abuse its discretion in refusing to grant Mitán additional time to serve after he failed to effectuate service over a period of roughly eight months: among other reasons, he failed to seek the additional extension before the expiration of the first extension. See Adams v. AlliedSignal Gen. Aviation Avionics, 74 F.3d 882, 887-88 (8th Cir. 1996). We conclude as well that the court did not abuse its discretion in denying the motions for discovery, service by a United States Marshal, or leave to serve the Missouri Secretary of State. Accordingly, we affirm. See 8th Cir. R. 47B.

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