UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-2040

BETSY ROSS, and as next friend of minor K.R.,

Plaintiff - Appellant,

v.

MARY KLESIUS, In her individual and official capacity at Cecil County Department of Social Services; LATONYA COTTON, In her individual and official capacity at Cecil County Department of Social Services; REBECCA SUTTON, In her individual and official capacity at Cecil County Department of Social Services; KIM COMPTON, In her individual and official capacity at Cecil County Department of Social Services; TINA LINKOUS, In her individual and official capacity at Cecil County Department of Social Services; SUSAN BAILEY, In her individual and official capacity at Cecil County Department of Social Services; HELEN MURRAY-MILLER, In her individual and official capacity Department of Human Resources - Social Services,

Defendants - Appellees,

and

CECIL COUNTY DEPARTMENT OF SOCIAL SERVICE; NICHOLAS RICCUITI, In his official capacity at Cecil County Department of Social Services; BARBARA SICLIANO, In her official capacity at Cecil County Department of Social Services,

Defendants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, Chief District Judge. (1:11-cv-00181-CCB)

Submitted: October 6, 2017 Decided: October 25, 2017

Before MOTZ, TRAXLER, and KEENAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Daniel L. Cox, THE COX LAW CENTER, LLC, Emmitsburg, Maryland, for Appellant. Brian E. Frosh, Attorney General, Ann M. Sheridan, Hilma J. Munson, Assistant Attorneys General, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Betsy Ross, for herself and as next friend of her minor daughter, K.R., filed a second amended civil complaint against eight named employees of the Cecil County Department of Social Services ("CCDSS") and a named employee of the Maryland Department of Human Resources (collectively, "Defendants"), alleging various violations of Maryland law and several federal constitutional violations under 42 U.S.C. § 1983 (2012). The district court ultimately dismissed or granted summary judgment in Defendants' favor as to each of Ross' claims. In this appeal, Ross challenges two of the district court's rulings: (1) its August 2014 order granting summary judgment as to her Fourth Amendment claim and part of Ross' First Amendment claim; and (2) its August 2016 order granting Defendants' second interlocutory motion for reconsideration and granting summary judgment in favor of Defendants as to the remainder of Ross' First Amendment claim. For the reasons that follow, we affirm.

We review de novo the district court's grant of summary judgment. *Lee v. Town of Seaboard*, 863 F.3d 323, 327 (4th Cir. 2017). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In conducting this analysis, we may not make credibility determinations or weigh the evidence, but instead must view the evidence and draw all reasonable inferences in the

light most favorable to Ross, the nonmoving party. *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 568-70 (4th Cir. 2015).

The district court resolved both of Ross' claims at least partially on the basis of qualified immunity. "The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Graham v. Gagnon*, 831 F.3d 176, 182 (4th Cir. 2016) (internal quotation marks omitted). A right is clearly established if it is "sufficiently clear that every reasonable official would have understood that what [s]he is doing violates that right" and "existing precedent . . . placed the statutory or constitutional question beyond debate." *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2012) (alteration and internal quotation marks omitted); *see Yates v. Terry*, 817 F.3d 877, 887 (4th Cir. 2017) (describing "clearly established" constitutional right). "In practical effect, qualified immunity gives government officials breathing room to make reasonable but mistaken judgments." *Graham*, 831 F.3d at 182 (internal quotation marks omitted). "Because qualified immunity is an immunity from suit rather than a mere defense to liability," and thus is "effectively lost if a case is erroneously permitted to go to trial," the Supreme Court "repeatedly ha[s] stressed the importance of resolving immunity questions at the earliest possible stage in litigation." *Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009) (internal quotation marks omitted).

Ross' Fourth Amendment claim alleged that Defendants Larson, Cotton, and Compton, at the direction of other Defendants, entered Ross' home without a warrant or

any recognized exception to the warrant requirement in order to remove Ross' foster children, purportedly in response to allegations of child neglect. It is well established that Fourth Amendment protections apply to the government's conduct of civil, as well as criminal, investigations. *Marshall v. Barlow's Inc.*, 436 U.S. 307, 312 (1978). In view of extant authority, and considering the facts in the light most favorable to Ross, the district court appropriately determined that Defendants were entitled to qualified immunity as a matter of law. Even assuming, without deciding, that Defendants violated Ross' Fourth Amendment rights, their conduct in entering or directing others' entry into Ross' home to retrieve her foster children, under the circumstances presented, did "not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Graham*, 831 F.3d at 182 (internal quotation marks omitted); *see* Md. Code Ann., Fam. Law §§ 5-325(a)(3), (b)(1), 5-504 (LexisNexis 2006) (establishing CCDSS's legal custody of Ross' foster children); *Martin v. Saint Mary's Dep't of Soc. Servs.*, 346 F.3d 502, 506 (4th Cir. 2003) (recognizing state's legitimate interest in investigating allegations of child neglect); *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993) (discussing reduced Fourth Amendment scrutiny applicable to home visits by social workers). We therefore affirm the district court's grant of summary judgment as to Ross' Fourth Amendment claim.

Ross' First Amendment claim contended that Defendants retaliated against Ross for her protected speech in three instances: by removing her foster children from her home pending a neglect investigation; by closing her foster home; and by prompting the denial, through Defendant Murray-Miller, of Ross' application for private foster home

licensure through The Arc. In its August 2014 order, the district court initially granted summary judgment only as to the portion of Ross' claim addressing the closure of her foster home. As Ross does not fairly challenge this portion of the district court's ruling on appeal, we decline to consider it. *See Suarez-Valenzuela v. Holder*, 714 F.3d 241, 248-49 (4th Cir. 2013) (deeming issues not raised in opening brief waived).

The district court granted summary judgment as to the remainder of Ross' First Amendment claim after granting Defendants' second motion for reconsideration. Ross challenges the district court's decision to reconsider its previous interlocutory rulings denying summary judgment. We review the district court's decision to grant reconsideration for abuse of discretion. *See Carlson v. Boston Sci. Corp.*, 856 F.3d 320, 325 (4th Cir. 2017).

"[A] district court retains the power to reconsider and modify its interlocutory judgments, including partial summary judgments, at any time prior to final judgment when such is warranted." *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514-15 (4th Cir. 2003); *see* Fed. R. Civ. P. 54(b). Interlocutory motions for reconsideration generally are not subject to the same restrictive standards applicable to postjudgment motions for reconsideration. *See Carlson*, 856 F.3d at 325; *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462, 1472 (4th Cir. 1991). The discretion afforded by Rule 54(b) "is not limitless," however, and "courts have cabined revision pursuant to Rule 54(b) by treating interlocutory rulings as law of the case." *Carlson*, 856 F.3d at 325. Under the law of the case doctrine, a court may revise its interlocutory ruling in limited circumstances: "(1) 'a subsequent trial produc[ing] substantially different

evidence'; (2) a change in applicable law; or (3) clear error causing 'manifest injustice.'" *Id.* (quoting *Am. Canoe*, 326 F.3d at 515). In light of this standard, and mindful that "[i]t is the affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial," *Bouchat v. Balt. Ravens Football Club, Inc.*, 346 F.3d 514, 526 (4th Cir. 2003) (internal quotation marks omitted), we discern no abuse of discretion in the district court's grant of reconsideration in this case.

As to the merits of Ross' remaining First Amendment allegations, Ross' retaliation claim survives summary judgment only if she presented sufficient evidence that: (1) she engaged in protected speech; (2) the alleged retaliation "adversely affected" her protected speech; and (3) the retaliation was causally connected to her protected speech. *Raub v. Campbell*, 785 F.3d 876, 885 (4th Cir. 2015) (internal quotation marks omitted). To satisfy the "rigorous" causation requirement, Ross must demonstrate that Defendants would not have engaged in the alleged retaliation "but for" her protected speech. *Id.* (internal quotation marks omitted). "In order to establish this causal connection, a plaintiff in a retaliation case must show, at the very least, that the defendant was aware of her engaging in protected activity." *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 501 (4th Cir. 2005).

Our review of the record reveals no reversible error in the district court's grant of summary judgment in favor of Defendants as to Ross' First Amendment retaliation claims related to the removal of her foster children and the denial of licensure by The Arc. We therefore affirm as to these issues substantially for the reasons stated by the district court. *See Ross v. Klesius*, No. 1:11-cv-00181-CCB (D. Md. Aug. 11, 2016).

Finally, Ross challenges the district court's grant of summary judgment as to her First Amendment claims against all Defendants in their official capacities. Because Ross' argument on appeal is fairly predicated only on the survival of her First Amendment claim regarding licensure by The Arc, which we have already rejected, we likewise decline to overturn the district court's rejection of Ross' official capacity claims.

Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED