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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TIMOTHY WOOD, Plaintiff-Appellant, v. MARICOPA COUNTY SPECIAL HEALTH CARE DISTRICT, a body politic; GERRI LEANN HARDIN; KELLIE DABROWSKI, Defendants-Appellees.	No. 18-15184 D.C. No. 2:16-cv-02215-SRB MEMORANDUM[*]

Appeal from the United States District Court
for the District of Arizona
Susan R. Bolton, District Judge, Presiding

Argued and Submitted March 7, 2019
Phoenix, Arizona

Before: IKUTA and FRIEDLAND, Circuit Judges, and BLOCK,[**] District Judge.

Timothy Wood appeals the district court's grant of summary judgment in favor of the Maricopa County Special Health Care District (MIHS), Gerri Leann

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Frederic Block, United States District Judge for the Eastern District of New York, sitting by designation.

Hardin, and Kellie Dabrowski (collectively, "defendants") on his claims of First Amendment retaliation and termination in violation of the Arizona Employment Protection Act, Ariz. Rev. Stat. § 23-1501(3)(c)(ii). He also appeals the district court's denial of his motion to reconsider its summary judgment order under Rule 59(e) or Rule 60 of the Federal Rules of Civil Procedure. We affirm.

We assume, without deciding, that Wood's internal complaints about nurse Dawn Liddy's conduct and his related complaint to the Arizona State Board of Nursing were protected by the First Amendment. Wood nevertheless failed to raise a genuine issue of material fact as to whether those complaints were a substantial motivating factor behind his termination. *See Howard v. City of Coos Bay*, 871 F.3d 1032, 1047–48 (9th Cir. 2017). MIHS provided legitimate reasons for the termination: the need for a cost-saving reduction in force and Wood's violation of the IV infiltration reporting policy. *See Curley v. City of N. Las Vegas*, 772 F.3d 629, 634 (9th Cir. 2014). Wood does not dispute that the defendants genuinely believed that eliminating his position would result in cost savings or that he violated the IV infiltration reporting policy. *See Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1063 (9th Cir. 2002). These two reasons for Wood's termination are not incompatible. *See Nidds v. Schindler Elevator Corp.*, 113 F.3d 912, 918 (9th Cir. 1996). Further, the record establishes that defendants promptly

investigated Wood's complaints, rather than treating them as unwarranted or inappropriate. Even if proximity in time between Wood's complaints and his termination created an inference that the former were a motivating factor for the latter, there is no genuine issue of material fact that the defendants would not have terminated Wood but for his complaints. *See Howard*, 871 F.3d at 1046–47; *Thomas v. City of Beaverton*, 379 F.3d 802, 808 (9th Cir. 2004) (citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977)). For the same reasons, Wood did not raise a genuine issue of material fact as to whether he was terminated for reporting a violation of Arizona law, *see* Ariz. Rev. Stat. § 23-1501(3)(c)(ii), even assuming his complaints addressed violations of Arizona law.[1]

The district court did not abuse its discretion in denying Wood's motion to reconsider under Rule 59(e) or Rule 60 of the Federal Rules of Civil Procedure. The district court acted within its discretion in concluding that the new evidence Wood presented in the motion to reconsider did not warrant reconsideration because it did not exist at the time of the district court's grant of summary

[1] Because Wood failed to raise a genuine issue of material fact under both the standard for First Amendment retaliation, *see Howard*, 871 F.3d at 1046–47, and the standard set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–803 (1973), for other types of retaliation claims, *see Curley*, 772 F.3d at 634, we need not decide which standard applies to retaliation claims brought under Ariz. Rev. Stat. § 23-1501(3)(c)(ii).

judgment, *see Jones v. Aero/Chem Corp.*, 921 F.2d 875, 878 (9th Cir. 1990), and the district court did not otherwise commit clear error in its grant of summary judgment, *see* Fed. R. Civ. P. 60; *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

AFFIRMED.