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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Karyl Krug,
Plaintiff,
vs.
Maricopa County Superior Court,
***et al.*,**
Defendants.

2:14-cv-01320 JWS
ORDER AND OPINION
[Re: Motion at Docket 12]

I. MOTION PRESENTED

At docket 12 plaintiff Karyl Krug (“Krug”) proceeding *in propria persona* filed a motion for reconsideration pursuant to Local Rule 7.2(g). In substance, Krug’s motion requests reconsideration or relief from the judgment entered against her at docket 9. If a motion for reconsideration is filed within 10 days of entry of judgment, as Krug’s motion was, it is treated as a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e).¹ Defendants Maricopa County Superior Court, *et al.* (collectively, “defendants”) filed an opposition at docket 27. Oral argument was not requested but would not assist the court.

¹*Am. Ironworks & Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001); *Teamsters Local 617 Pension & Welfare Funds v. Apollo Grp., Inc.*, 282 F.R.D. 216, 220 (D. Ariz. 2012) (holding that Local Rule 7.2(g) applies to challenges to orders, not judgments).

1 **II. BACKGROUND**

2 The background giving rise to this lawsuit is set out in detail in the court's earlier
3 order at docket 7 and need not be repeated here. In that order the court granted
4 defendants' motion to dismiss Krug's complaint for failure to state a claim. Thereafter,
5 judgment was entered that Krug take nothing.

6 **III. STANDARD OF REVIEW**

7 "[R]econsideration of a judgment after its entry is an extraordinary remedy which
8 should be used sparingly."² District courts enjoy considerable discretion in granting or
9 denying a motion to reconsider.³ "In general, there are four basic grounds upon which a
10 Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest
11 errors of law or fact upon which the judgment rests; (2) if such motion is necessary to
12 present newly discovered or previously unavailable evidence; (3) if such motion is
13 necessary to prevent manifest injustice; or (4) if the amendment is justified by an
14 intervening change in controlling law."⁴ A Rule 59(e) motion may not be used to raise
15 arguments or present evidence that could have been raised prior to the entry of
16 judgment.⁵

17 **IV. DISCUSSION**

18 Krug argues that reconsideration of the judgment is necessary to correct the
19 following five manifest errors of fact or law upon which the judgment rests: (1) the court
20 misapplied Rule 12(b)(6); (2) the court made an inappropriate credibility determination
21 based on a deceptive exhibit; (3) the court violated Rule 12(d) by not giving the parties
22 sufficient notice that it would review evidence outside the pleadings; (4) the court erred
23 in ruling that the complaint does not address an obvious alternative explanation for
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25 ²11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2810.1 (3d ed. 2004)
26 (hereinafter "Wright & Miller").

27 ³*Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).

28 ⁴*Id.*

⁵11 Wright & Miller § 2810.1.

1 Krug's termination; and (5) the court erred in ruling that it would be futile to allow Krug
2 to amend her complaint to name Maricopa County as a defendant.

3 **A. The Court Properly Applied Rule 12(b)(6)**

4 Krug argues that the court misapplied Rule 12(b)(6) by not construing the
5 complaint in the light most favorable to Krug⁶ and by inappropriately relying on *Ashcroft*
6 *v. Iqbal*.⁷ These arguments lack merit.

7 With regard to Krug's first argument, the only matter that Krug challenges with
8 specificity is the court's conclusion that the only factual support in her complaint for her
9 claim that she was fired in retaliation for protected speech is the timing of her
10 termination.⁸ Krug argues that this conclusion is "insupportable" because of "the
11 copious factual recitations set out in" her complaint. Because Krug's motion does not
12 cite a single one of these factual recitations, and because her retaliatory termination
13 claims are supported by legal conclusions, not facts, Krug's argument fails.

14 With regard to Krug's second argument, Krug argues that *Iqbal*'s "'plausibility'
15 analysis" does not apply because the defendants in this case are not "geographically
16 remote."⁹ Krug cites no authority to support her argument that if there is no "geographic
17 remoteness of the parties" a complaint need not allege plausible claims. This argument
18 lacks merit.

19 **B. The Court Did Not Make a Credibility Determination Based on Exhibit 1, and**
20 **Exhibit 1 Is Not Deceptive**

21 In its dismissal order the court held that the facts in Krug's complaint are
22 consistent with her retaliatory termination claims, but insufficient to render those claims
23 plausible. The court bolstered this conclusion by observing that the complaint does not
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25 ⁶Doc. 12 at 3-4.

26 ⁷556 U.S. 662 (2009).

27 ⁸Doc. 7 at 6-7.

28 ⁹Doc. 12 at 15.

1 adequately address an obvious alternative explanation for Krug’s termination: the
2 inappropriate language Krug used in an email to defendant Diane Alessi (“Alessi”).
3 Krug’s complaint mentions the email in several locations,¹⁰ and defendants provided a
4 copy of it to the court as Exhibit 1 to their motion to dismiss.

5 Krug now asserts that the court determined she is not credible based on
6 Exhibit 1 and that Exhibit 1 is incomplete and therefore deceptive. As to Krug’s former
7 assertion, the court made no such credibility determination. Further, Krug’s assertion
8 that Exhibit 1 is deceptive is unpersuasive because Krug effectively admits in her
9 opposition that Exhibit 1 shows her “discourtesy” and “lack of civility” toward Alessi.¹¹

10 **C. The Court Did Not Consider Evidence Outside the Pleadings**

11 Krug next argues that the court violated Rule 12(d) by considering evidence
12 outside the pleadings (Exhibit 1 to defendants’ motion to dismiss) without giving the
13 parties a reasonable opportunity to present all pertinent material. Krug raised this same
14 argument in opposition to defendants’ motion to dismiss.¹² But, as the court pointed out
15 in its dismissal order, evidence is not “outside” the complaint if the complaint specifically
16 refers to it and if its authenticity is not questioned.¹³ Krug has never disputed that her
17 complaint refers to the email found in Exhibit 1,¹⁴ nor has she questioned that exhibit’s
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21 ¹⁰See Doc. 1 at 11 ¶¶ 79-80; *id.* at 12 ¶ 84.

22 ¹¹Doc. 5 at 8.

23 ¹²See *id.* at 1 (“Defendants raise the motion under 12(b)(6), but also argue for summary
24 judgment, especially as they submit documents extraneous to the Complaint.”).

25 ¹³See *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds*
26 *by Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (“[D]ocuments whose
27 contents are alleged in a complaint and whose authenticity no party questions, but which are
not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion
to dismiss.”).

28 ¹⁴See Doc. 1 at 11 ¶¶ 79-80.

1 authenticity. To the contrary, Krug admits that Exhibit 1 shows “an e-mail exchange
2 between Krug and Defendant’s [sic] Alessi and Westover.”¹⁵

3 **D. The Court Correctly Ruled That the Complaint Does Not Address an**
4 **Obvious Alternative Explanation for Krug’s Termination**

5 Krug argues that the court erred in ruling that her complaint fails to address the
6 possibility that she was terminated not for her protected speech, but for using
7 unprofessional language in her email to Alessi. Plaintiff asserts that this ruling is
8 incorrect because she addresses that email in her opposition to defendants’ motion. In
9 her opposition, Krug states:

10 Clearly, the Defendants’ [sic] intend to defend themselves with an obvious
11 pretext, that Krug’s alleged discourtesy to Defendant Alessi somehow
12 trumps all the public interests concern [sic] addressed in the previous
13 sections, and is the real reason that Krug was terminated. Given the
14 remedial actions the Defendants took after having fired Krug, it seems
15 unlikely that a lack of civility to co-Defendant Alessi was the real reason
16 Krug was terminated. It seems probable that the criminal liability of all the
17 Defendants was at the heart of this illegal retaliation against Krug.¹⁶

18 The fact remains, however, that Krug’s complaint does not address the possibility that
19 she was terminated for using unprofessional language. Krug’s argument that this
20 possibility is unlikely is conclusory and unpersuasive.

21 **E. The Court Correctly Ruled That It Would Be Futile to Allow Krug to Amend**
22 **Her Complaint to Name Maricopa County As a Defendant**

23 Finally, Krug argues that it would not be futile to allow her to amend her
24 complaint to add Maricopa County as a defendant. The basis for this argument is her
25 “impression that she was a hybrid Maricopa County” and Maricopa County Superior
26 Court employee and, therefore, maybe Maricopa County would have to satisfy a
27 potential judgment in this case.¹⁷ Because Krug does not provide any evidence or legal
28 authority that shows that she was actually employed by Maricopa County, nor does she

26 ¹⁵Doc. 5 at 7.

27 ¹⁶*Id.* at 8.

28 ¹⁷Doc. 12 at 16-17.

1 explain why she was unable to present such evidence or authority in opposition to
2 defendants' motion to dismiss, Krug's argument lacks merit.

3 **V. CONCLUSION**

4 For the reasons above, the motion at docket 12 is **DENIED**.

5 DATED this 26th day March 2015.

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8 /s/ JOHN W. SEDWICK
9 SENIOR UNITED STATES DISTRICT JUDGE
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