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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

REGINALD RAY YORK,
Plaintiff,
v.
C. GARCIA, et al.,
Defendants.

No. 1:15-cv-01828-DAD-BAM (PC)

ORDER DENYING PLAINTIFF’S MOTION
FOR RECONSIDERATION

(Doc. No. 94)

Plaintiff Reginal Ray York is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This case proceeds on plaintiff’s Eighth Amendment claims against defendant Garcia for excessive use of force and against defendant Neighbors for failure to protect. (Doc. No. 81.)

On November 8, 2019, a magistrate judge of this court conducted a settlement conference in this case at California State Prison, Corcoran. (Doc. Nos. 86; 91 at 1.)

On December 5, 2019, the assigned magistrate judge issued an order denying plaintiff’s motion for “a court order for the defendants and prison representative to hold [another] settlement conference hearing with the plaintiff to negotiate a settlement based upon the claims in this case and [for] appointment of an attorney.” (Doc. No. 91 at 1; *see also* Doc. No. 90 at 1.) In his motion, plaintiff argued that the offers of settlement he received at the November 8, 2019 settlement conference were not fair or reasonable. (*See generally* Doc. No. 90.) In denying his

1 motion, the magistrate judge concluded that: (1) plaintiff does not have a right under state or
2 federal law to settle his case for an amount that he considers to be fair and reasonable; (2) nor
3 does he have a constitutional right to appointed counsel in this civil action; (3) nor has he
4 demonstrated exceptional circumstances warranting the appointment of counsel on his behalf in
5 this case. (Doc. No. 91 at 1–3.)

6 On January 2, 2020, plaintiff filed the pending motion for reconsideration of the
7 magistrate judge’s December 5, 2019 order. (Doc. No. 94.) In his motion for reconsideration,
8 plaintiff contends that: (1) the magistrate judge did not have the authority to issue that order;
9 (2) he is entitled to another settlement conference; (3) his mental illness constitutes an exceptional
10 circumstance warranting the appointment of counsel; and (4) “new evidence” that he is anemic
11 also weighs in favor of appointing him counsel in this action. (*Id.* at 1–9.)

12 Federal Rule of Civil Procedure 60(b)¹ provides that “the court may relieve a party . . .
13 from . . . [an] order . . . for the following reasons: (1) mistake, inadvertence, surprise, or
14 excusable neglect; (2) newly discovered evidence; . . . or (6) any other reason justifying relief.”
15 Fed. R. Civ. P. 60(b). “A motion for reconsideration should not be granted, absent highly unusual
16 circumstances, unless the district court is presented with newly discovered evidence, committed
17 clear error, or if there is an intervening change in the controlling law,” and it “may not be used to
18 raise arguments or present evidence for the first time when they could reasonably have been
19 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
20 F.3d 873, 880 (9th Cir. 2009) (internal quotation marks and citations omitted). In seeking
21 reconsideration of an order, Local Rule 230 requires a party to show “what new or different facts
22 or circumstances are claimed to exist which did not exist or were not shown upon such prior
23 motion, or what other grounds exist for the motion.” L.R. 230(j)(3). “A party seeking
24 reconsideration must show more than a disagreement with the Court’s decision, and
25 recapitulation” of that which was already considered by the court in rendering its decision.

26 ¹ Plaintiff brings his motion pursuant to Federal Rules of Civil Procedure 59(e) and 60(b). (Doc.
27 No. 94 at 2.) Plaintiff’s reliance on Rule 59(e), however, is misplaced, as that rule deals with
28 “motion[s] to alter or amend a judgment,” Fed. R. Civ. P. 59(e), and plaintiff is not seeking to
alter or amend a judgment in the pending motion.

1 *United States v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001). To
2 succeed, a party must set forth facts or law of a strongly convincing nature to induce the court to
3 reverse its prior decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656,
4 665 (E.D. Cal. 1986), *rev'd in part on other grounds*, 828 F.2d 514 (9th Cir. 1987).

5 Relying on 28 U.S.C. § 636(b)(1)(B), (c)(1), plaintiff first argues that the magistrate judge
6 did not have the authority to issue the December 5, 2019 order denying his requests for another
7 settlement conference and for appointed counsel because he did not consent to proceeding before
8 the magistrate judge. (Doc. No. 94 at 3.) Plaintiff's argument in this regard is frivolous. Title
9 28 U.S.C. § 636(b)(1)(A) establishes that a:

10 Magistrate Judge is authorized to rule on a wide variety of pre-trial
11 matters, **except** for those that would necessarily result in a
12 termination or dismissal of the matter, e.g., motions to dismiss,
13 injunctive relief, summary judgment. Moreover, pursuant to [28
14 U.S.C. § 636(b)(4)], this Court has promulgated Local Rules relating
15 to the specific powers of a Magistrate Judge. Local Rule 300(b)(2)
16 provides that "general pretrial matters" shall be defined as "all
17 pretrial matters as to which the standard of review is the 'clearly
18 erroneous or contrary to law' standard set forth in 28 U.S.C.
19 § 636(b)(1)(A)." Appointment of counsel falls within this standard
20 of review and, historically, in this district such matters fall squarely
21 within the specified purview of Magistrate Judges. This is so
22 regardless of whether or not the parties have consented to the
23 Magistrate Judge's jurisdiction. Under [plaintiff's] logic, absent
24 consent, a Magistrate Judge could not handle any pretrial matters, a
25 result that is entirely contrary to the purpose and plain meaning of
26 both § 636 and this Court's Local Rules.

19 *Page v. King*, No. 1:16-cv-00522-JLT, 2016 WL 2962407, at *2 (E.D. Cal. May 23, 2016)
20 (citation omitted) (emphasis in original); *see also* L.R. 302(c)(12) (noting that the calendaring of
21 settlement conferences is a duty to be performed by magistrate judges in this district).
22 Accordingly, plaintiff's first basis for reconsideration is unavailing.

23 Next, plaintiff contends that he is entitled to another settlement conference because a
24 prison representative did not appear at the November 8, 2019 settlement conference as ordered by
25 the magistrate judge. (Doc. No. 94 at 3–5.) The order that plaintiff is relying on directed "[a]
26 representative with full and unlimited authority to negotiate and enter into a binding settlement"
27 to attend the settlement conference. (Doc. No. 80 at 2.) As plaintiff noted in his motion seeking
28 another settlement conference, defense counsel attended the November 8, 2019 settlement

1 conference, and the parties attempted to settle the matter, but were unable to do so. (Doc. No. 90
2 at 2; *see also* Doc. No. 86 (minutes from the November 8, 2019 settlement conference, noting that
3 the case did not settle, and that plaintiff and defense counsel were present).) Plaintiff also noted
4 that “[t]he Defendants’ attorney told [him] that the Prison Representative did not give her
5 authority to settle the case for \$85,000 or anywhere near the amount that he would be seeking.”
6 (Doc. No. 90 at 4.) As these allegations demonstrate, defense counsel *was* authorized to negotiate
7 and enter into a settlement; just not for the amount that plaintiff wanted. The magistrate judge’s
8 December 5, 2019 order correctly notes, however, that plaintiff does not have a right under state
9 or federal law to settle his case for an amount that he considers to be fair and reasonable. (Doc.
10 No. 91 at 2.) The pending motion for reconsideration does not provide a basis to question the
11 magistrate judge’s order in this regard. Instead, it merely disagrees with the magistrate judge’s
12 order, which, of course, is not a basis for reconsideration. *See Westlands Water Dist.*, 134 F.
13 Supp. 2d at 1131. Accordingly, plaintiff’s second basis for reconsideration is also unavailing.

14 Plaintiff next moves for reconsideration of the magistrate judge’s order denying his
15 motion for appointment of counsel. He cites to the Americans With Disabilities Act and argues
16 that the magistrate judge did not properly consider his level of functioning or the fact that he
17 suffers from a mental illness in denying his motion. (Doc. No. 94 at 7.) The magistrate judge did
18 consider plaintiff’s alleged mental illness, but nevertheless concluded that he “has demonstrated
19 that he is able to clearly articulate his claims and prosecute this action.” (Doc. No. 91 at 3); *see*
20 *also Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997). Again, plaintiff’s disagreement with
21 the magistrate judge’s conclusion in this regard is not a basis for reconsideration. Moreover, the
22 fact that, after the issuance of the magistrate judge’s order denying his motion for appointment of
23 counsel, plaintiff “was informed . . . that he suffer[s] from . . . Anemia” (Doc. No. 94 at 9) does
24 not mean that appointment of counsel is now warranted. The record continues to reflect that the
25 legal issues involved in this action are not complex and that plaintiff can adequately articulate his
26 cognizable claims, in spite of his alleged illnesses. *See also Ricks v. Austria*, No. 1:15-cv-01147-
27 BAM (PC), 2016 WL 1734326, at *2 (E.D. Cal. May 2, 2016) (“While a pro se litigant may be

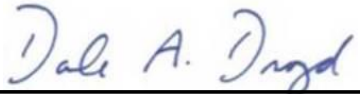
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1 better served with the assistance of counsel,” the court need not appoint counsel if plaintiff can
2 articulate his claims). Thus, plaintiff’s final bases for reconsideration are also unavailing.

3 For the reasons set forth above, plaintiff’s motion for reconsideration of the magistrate
4 judge’s order denying his motion for another settlement conference and for appointment of
5 counsel (Doc. No. 94) is denied in its entirety.

6 IT IS SO ORDERED.

7 Dated: June 22, 2020

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UNITED STATES DISTRICT JUDGE

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