

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

----oo0oo----

DENA PEREZ, an individual,
Plaintiff,

NO. CIV. S-07-927 FCD GGH

v.

MEMORANDUM AND ORDER

CITY OF PLACERVILLE, GEORGE
NEILSEN, and
CHRISTIAN BEYER,

Defendants.

----oo0oo----

This matter is before the court on plaintiff Dena Perez' motion for reconsideration of the court's September 9, 2008 order granting in part and denying in part defendants City of Placerville and Christian Beyer's motion for summary judgment (the "Order").¹ Fed. R. Civ. P. 59(e), 60(b).² In said Order,

¹ Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. L.R. 78-230(h).

² Where the court's ruling has resulted in a final judgment or order, a motion for reconsideration may be based either on Rule 59(e) (motion to alter or amend judgment) or Rule 60(b) (motion for relief from judgment) of the Federal Rules of Civil Procedure. See School Dist. No. 1J, Multnomah County v.

1 the court granted defendants' motion with respect to all of
2 plaintiff's claims, except her claims for unlawful search and
3 seizure of plaintiff's residence in violation of the Fourth
4 Amendment (first and second claims for relief) and trespass to
5 real property (sixth claim for relief). With respect to those
6 claims, the court found that triable issues of fact remained as
7 to whether defendants had probable cause to believe that the
8 parolee Masse lived at plaintiff's residence, thereby providing
9 legal grounds to enter plaintiff's premises without a warrant.
10 Plaintiff does not contest that holding. (Order at 8-15.)

11 However, she claims herein that with respect to certain
12 other claims, the court committed "clear error" by misapplying
13 the controlling law to the evidence submitted by plaintiff; upon
14 proper consideration, plaintiff contends her claims alleging
15 unlawful seizure of personalty (her fourth, eighth, twelfth and
16 thirteenth claims for relief), involving the killing of her dog,
17 Harley, by Officer Beyer, should not have been dismissed. The
18 court found as to plaintiff's constitutional claim for unlawful
19 seizure of personalty in violation of the Fourth Amendment, that
20 defendant Beyer was entitled to qualified immunity because
21 plaintiff failed to raise a triable issue of fact that he
22 violated plaintiff's Fourth Amendment rights in killing Harley in
23 defense of his fellow officer and police canine who were being
24 attacked by the dog. As to plaintiff's state law claims, for

25 _____
26 ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). Because
27 plaintiff's motion was filed more than ten days after entry of
28 the court's order, the court will consider the instant motion
under Rule 60(b). See Fed. R. Civ. P. 59(e) (requiring that all
motions submitted pursuant to this rule be filed within ten days
of entry of judgment or order).

1 trespass to personal property, trespass to chattels, and
2 conversion, defendant Beyer was similarly entitled to summary
3 judgment because plaintiff failed to raise a triable issue of
4 fact demonstrating that he was not privileged to commit said
5 torts for the purpose of defending a third person. (Order at 16-
6 20.)

7 For the reasons stated below, plaintiff's motion for
8 reconsideration is DENIED.

9 Federal Rules of Civil Procedure 59(e) and 60(b) are
10 "extraordinary remed[ies] to be used sparingly in the interests
11 of finality and conservation of judicial resources." Kona
12 Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th
13 Cir. 2000). Thus, the Ninth Circuit has made clear that a motion
14 for reconsideration should not be granted "'absent highly unusual
15 circumstances, unless the district court is presented with newly
16 discovered evidence, committed clear error, or if there is an
17 intervening change in the controlling law.'" Id. (citation
18 omitted.) When a motion for reconsideration is based on a claim
19 of clear error, as in this case, the moving party must do more
20 than repeat arguments made in the underlying motion.

21 "Reiteration of arguments originally made in support of, or in
22 opposition to, a motion . . . do not provide a valid basis for
23 reconsideration." Reliance Ins. Co. v. Doctors Co., 299 F. Supp.
24 2d 1131, 1154 (D. Hawaii 2003); Backlund v. Barnhart, 778
25 F.2d 1386, 1388 (9th Cir. 1985).

26 However, this is precisely what plaintiff has done in this
27 motion; she simply repeats arguments she asserted in opposition
28 to the original motion, arguments which were fully considered by

1 the court in its Order. For example, plaintiff contends herein
2 that the court failed to consider critical facts in its Order,
3 emphasizing plaintiff's evidence which suggested that plaintiff's
4 dog Harley was shot by Officer Beyer, not on the street side of
5 plaintiff's gate as claimed by the officers, but well inside
6 plaintiff's backyard. Plaintiff's evidence was considered by the
7 court but did not factor in to the analysis of these claims as
8 the precise location of the shooting was irrelevant to the
9 critical inquiry--whether Officer Beyer shot Harley in defense of
10 his fellow officer and police canine who were being attacked by
11 the dog.³ Only material facts can preclude entry of summary
12 judgment. (Order at 3 n. 5 ["In some critical respects,
13 plaintiff attempts to dispute defendants' undisputed facts but
14 she has not submitted material [or] admissible evidence to do so.
15 As such, the court finds those facts undisputed.") Plaintiff
16 failed to produce such evidence, and thus, summary judgment was
17 properly entered in defendant Beyer's favor. (Order at 18-19.)

18 Plaintiff also maintains the court improperly accepted the
19 officers' versions of the events as true, in particular, their
20 testimony that they did not know a dog was present on the
21 property. Plaintiff argues the court ignored her own testimony
22 that (1) she told the officers at some unidentified time before
23 the incident that she had a dog on the property, and (2) there
24 was a "Beware of Dog Sign" on the gate to the backyard. Like the
25 above, these facts were considered by the court but they were not

26
27 ³ To the contrary, the location of the shooting was
28 relevant to plaintiff's claims alleging unlawful search and
seizure of her real property, but as set forth above, these
claims survived summary judgment.

1 material to the inquiry. This testimony was insufficient to
2 raise a triable issue of fact that *on the day in question*, the
3 officers knew a dog was present on the property. Indeed, the
4 undisputed evidence established that the officer, who was
5 ultimately attacked by plaintiff's dog, made reasonable efforts
6 to discern whether a dog was in the backyard, by making sounds to
7 elicit a response from a dog and looking over the back fence.
8 Only when there was no response and the officer did not see a
9 dog, did he open the gate, slightly. The officer was then
10 immediately attacked by Harley. (Order at 19.) Plaintiff's
11 testimony did not dispute these facts, which described the events
12 on the day of the incident. As such, defendant Beyer was
13 entitled to summary judgment.

14 In sum, plaintiff's instant motion expresses disagreement
15 with the court's Order. However, disagreement with a court's
16 ruling is not a basis for granting reconsideration. United
17 States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131 (E.D.
18 Cal. 2001) (holding that "[a] party seeking reconsideration must
19 show more than a disagreement with the Court's decision, and
20 recapitulation of the cases and arguments considered by the court
21 before rendering its original decision fails to carry the moving
22 party's burden") (citations omitted). In this motion, plaintiff
23 has done nothing more than repackage the arguments she previously
24 made, by emphasizing certain, specific evidence she proffered on
25 the motion. Despite the repackaging, the arguments are no
26 different now than on the original motion. Her arguments were
27 fully considered in the Order, and the court need not restate its
28 full analysis here. There is no basis for granting

1 reconsideration.

2 Thus, for these reasons and those stated fully in the
3 court's Order of September 9, 2008, the court DENIES plaintiff's
4 motion for reconsideration.

5 IT IS SO ORDERED.

6 DATED: January 14, 2009



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28