

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MELISSA YOUNG, et al.,

Plaintiffs,

v.

ANDRES MARISCAL, et al.,

Defendants.

3:16-cv-00678-VPC

ORDER

Before the court is the motion of defendants Washoe County School District and Andres Mariscal's (collectively "defendants") for reconsideration (ECF No. 39) of this court's June 12, 2017 order denying their motion to dismiss (ECF No. 38). Melissa Young ("plaintiff") opposed (ECF No. 40), and defendants replied (ECF No. 41). For the reasons articulated below, the court denies defendants' motion for reconsideration.

I. Background and Procedural History

On November 22, 2016, plaintiff initiated a lawsuit under 42 U.S.C. § 1983 alleging that defendants violated J.B.R.'s Fourth Amendment rights and a series of state law violations, after confronting plaintiff J.B.R. in an open hallway at Sparks Middle School. (ECF No. 10; ECF No. 40 at 3.) On January 13, 2017, defendants filed their motion to dismiss plaintiff's first amended complaint, arguing that plaintiff failed to state a colorable Fourth Amendment claim. (ECF No. 17.)

This court denied defendants' motion to dismiss, finding that plaintiff properly pled a § 1983 claim and that qualified immunity was not available to defendant Mariscal. (ECF No. 38.) On June 29, 2017, defendants filed their motion for reconsideration arguing that the court erred in failing to consider the educational context of plaintiffs' Fourth Amendment claim, and in denying defendant

1 Mariscal’s qualified immunity argument. (ECF No. 39 at 5-7.) On July 7, 2017, plaintiff filed her
2 opposition to the motion and requested appropriate sanctions due to defendants’ violation of Local
3 Rule 59-1(b). (ECF No. 40 at 5.) Defendants replied (ECF No. 41).

4 **II. Legal Standard**

5 The Federal Rules of Civil Procedure do not contemplate reconsideration of interlocutory
6 orders. See, e.g., Fed. R. Civ. P. 60(b) (specifying that this rule only applies to “a final judgment,
7 order, or proceeding”). However, a district court “possesses the inherent procedural power to
8 reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient” so long as
9 it has jurisdiction. *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir.
10 2001).

11 Therefore, a motion to reconsider must set forth the following: (1) some valid reason why the
12 court should revisit its prior order; and (2) facts or law of a “strongly convincing nature” in support
13 of reversing the prior decision. *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003).
14 Reconsideration may be appropriate if (1) the court is presented with newly discovered evidence, (2)
15 has committed clear error, or (3) there has been an intervening change in controlling law. *Sch. Dist.*
16 *No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *Kona Enters.,*
17 *Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). A motion for reconsideration is properly
18 denied where it presents no new arguments. See *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir.
19 1985). However, it “may not be used to raise arguments or present evidence for the first time when
20 they could reasonably have been raised earlier in the litigation.” *Kona Enters., Inc.*, 229 F.3d at 890.
21 As the case law indicates, motions to reconsider are granted rarely. See, e.g., *School Dist. No. 1J*, 5
22 F.3d at 1263.

23 **III. Discussion**

24 Local Rule 59-1 addresses motions for reconsideration and states:

25 (a) Motions seeking reconsideration of case-dispositive orders
26 are governed by Fed. R. Civ. P. 59 or 60, as applicable. A party seeking
27 reconsideration under this rule must state with particularity the points of
law or fact that the court has overlooked or misunderstood. Changes in

1 legal or factual circumstances that may entitle the movant to relief also
2 must be stated with particularity. The court possesses the inherent power
3 to reconsider an interlocutory order for cause, so long as the court retains
4 jurisdiction. Reconsideration also may be appropriate if (1) there is
5 newly discovered evidence that was not available when the original
6 motion or response was filed, (2) the court committed clear error or the
7 initial decision was manifestly unjust, or (3) if there is an intervening
8 change in controlling law.

6 (b) Motions for reconsideration are disfavored. A movant must
7 not repeat arguments already presented unless (and only to the extent)
8 necessary to explain controlling, intervening law or to argue new facts.
A movant who repeats arguments will be subject to appropriate
sanctions.

9 Plaintiff contends that defendants violated Local Rule 59-1(b) because defendants have
10 offered no newly discovered evidence, the court did not commit clear error, nor was the decision
11 manifestly unjust, and there is no intervening change in controlling law. The court agrees.

12 Defendants' motion for reconsideration contains redundant and repetitive arguments that were
13 already presented in their motion to dismiss. (Compare ECF No. 17 with ECF No. 39.) For example,
14 defendants reassert their position, pursuant to *New Jersey vs. T.L.O.*, 469 U.S. 325, 342 (1985), that
15 defendant Mariscal's actions were reasonable and did not constitute an actionable Fourth Amendment
16 violation. (ECF No. 17 at 13-14; ECF No. 39 at 5.) Defendants also continue to cite non-controlling,
17 out-of-circuit case law that was previously used in their motion to dismiss such as, *Gottlieb ex. Rel.*
18 *v. Laurel Highlands School Dist.*, 272 F. 3d 168, 178 (3d Cir. 2001), *Wallace v. Batavia Sch. Dist.*
19 *#101*, 68 F.3d 1010 (7th Cir. 1995), and *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 393 (6th
20 Cir. 2005). (ECF No. 17 at 12-15; ECF No. 39 at 5-6; ECF No. 41 at 5.) Defendants are admonished
21 not to rely on out-of-circuit precedent before this court as a means to explain controlling, intervening
22 law. Defendants should also thoroughly review and understand the standard for motions for
23 reconsideration and LR 59-1 before filing such a motion. Motions for reconsideration are rarely
24 granted and are reserved for when the (1) the court is presented with newly discovered evidence, (2)
25 has committed clear error, or (3) there has been an intervening change in controlling law. *Kona*
26 *Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). For these reasons, defendants'
27 motion for reconsideration is denied.

1 The court declines to strike defendants' motion and it will not issue monetary sanctions at this
2 time. However, defendants are strongly urged to review the Local Rules of this court and Ninth
3 Circuit case law before filing such motions in the future.

4 **IV. Conclusion**

5 For the reasons articulated above, the court denies defendants' motion for reconsideration
6 (ECF No. 39).

7 **IT IS SO ORDERED.**

8 **DATED:** August 1, 2017.

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UNITED STATES MAGISTRATE JUDGE