

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JERRY A. HURST, )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No. 03-362-KAJ  
 )  
CITY OF REHOBOTH BEACH, et al., )  
 )  
Defendants. )

**MEMORANDUM ORDER**

**I. INTRODUCTION**

Plaintiff Jerry A. Hurst ("Hurst"), who proceeds *pro se*, brings this civil rights action pursuant to 42 U.S.C. §1983. He also invokes 18 U.S.C. § 242, a statute that establishes criminal liability for certain deprivations of civil rights under color of law. Hurst brings this suit against a number of defendants, many of whom have now been dismissed. (See Docket Item [D.I.] 118, 119.) He seeks compensatory and punitive damages, attorney's fees, an award of his costs of suit, and other relief as the Court deems appropriate. The defendants remaining in the case are the City of Rehoboth Beach, Paul Parson, Jaime Riddle, Michael Armstrong, and Tammie Morrison.

Now before me is Hurst's Motion to Alter or Amend Judgment pursuant to Fed. R. Civ. P. 59(e). Hurst asks me to reconsider my March 31, 2005, ruling denying several of his motions and dismissing several defendants from this case.

**II. STANDARD OF REVIEW**

The standard for obtaining relief under Rule 59(e) is high. The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly

discovered evidence. *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). A motion for reconsideration may be granted if the moving party shows: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice. *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999).

A motion for reconsideration is not properly grounded on a request that a court rethink a decision already made. See *Glendon Energy Co. v. Borough of Glendon*, 836 F.Supp. 1109, 1122 (E.D.Pa.1993). Motions for reargument or reconsideration may not be used "as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided." *Brambles USA, Inc. v. Blocker*, 735 F.Supp. 1239, 1240 (D.Del.1990). Reargument, however, may be appropriate where "the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Brambles USA*, 735 F.Supp. at 1241 (D.Del. 1990) (citations omitted); See also D. Del. LR 7.1.5.

### **III. DISCUSSION**

Hurst seeks reinstatement of the defendants and claims dismissed in my March 31, 2005, ruling. He argues that in the same order, I incorrectly decided the motions filed by him and certain defendants.

Hurst does not argue that there was an intervening change in the controlling law or the availability of new evidence that was not available when I issued my order.

Rather, he appears to argue that there is a need to correct a clear error of law or fact. Indeed, throughout his motion Hurst argues that I misapplied the law, misstated the facts as alleged in his complaint, and abused my discretion in making my rulings. More particularly, Hurst argues that I misconstrued his Request for Default (D.I. 64) by deeming it a Motion for Default Judgment, that I erred in denying his Motion to Proceed *in forma pauperis* (D.I. 92), that I erred in denying his Motion for Miscellaneous Relief (D.I. 96), and that I abused my discretion in denying his Motion to Amend the Complaint (D.I. 101). He also contends that I should not have granted the Motions to Dismiss filed by the Sussex County defendants (D.I. 8), Speakman (D.I. 9), Banks (D.I. 20), Sutherland (D.I. 20), Ladd (D.I. 20), Glasco (D.I. 20), Reynolds (D.I. 20), Bushey (D.I. 20), Bucci (D.I. 20), Wothers (D.I. 58), and the Sands Defendants (D.I. 82).

Hurst simply does not agree with the rulings I made in the March 31, 2005, order. The law has not changed and there is no new evidence. There is no need to correct a clear error of law or fact or to prevent manifest injustice. Indeed, the manifest injustice would be to grant the relief Hurst demands in the present motion. He has not demonstrated any of the grounds necessary to warrant reconsideration and, therefore, his motion will be denied.

#### **IV. PERSONAL INVOLVEMENT**

In reviewing the complaint it has come to my attention that other than to indicate she is an EMT, the complaint contains no claims against defendant Tammie Morrison. A civil rights complaint must state the conduct, time, place, and persons responsible for the alleged civil rights violations. *Evancho v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005)

(citing *Boykins v. Ambridge Area Sch. Dist.*, 621 F.2d 75, 80 (3d Cir. 1980); *Hall v. Pennsylvania State Police*, 570 F.2d 86, 89 (3d Cir.1978)). Further, “[a] defendant in a civil rights action must have personal involvement in the alleged wrongs” to be liable. *Sutton v. Rasheed*, 323 F.3d 236, 249 (3d Cir. 2003)(quoting *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988).

Because the complaint contains no allegations against defendant Tammie Morrison, Hurst has failed to provide “a short and plain statement of the claim showing that [he] is entitled to relief....” Fed. R. Civ. P. 8(a), and he has failed to state “a claim upon which relief can be granted”. Fed.R.Civ.P. 12(b)(6); see also *Green v. Howard R. Young Corr. Inst.*, 229 F.R.D. 99, 105 (D. Del. 2005); *Desardouin v. United Parcel Serv., Inc.*, 285 F.Supp.2d 153, 157 (D.Conn. 2003). Therefore, I will *sua sponte* dismiss without prejudice the claims brought against Tammie Morrison.

## **V. REMAINING CLAIMS**

So that there is no confusion amongst the parties, I am listing the claims and defendants that remain in the case at this point. I make no judgment on whether Hurst can prevail on these claims.

*Rehoboth Beach*. Municipality liability claim under 42 U.S.C. § 1983 for alleged violations under the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, and negligent training and supervision (Counts I, VII).

*Paul Parsons, Jaime Riddler, and Michael Armstrong*. Fourth and Fourteenth

Amendment claims for excessive force<sup>1</sup> (Count II); Fourth Amendment claim for unlawful search and seizure (Count VI); Free speech claim under the First and Fourteenth Amendments of the U.S. Constitution (Count III); illegal seizure, abduction and kidnaping under the Fourth and Fourteenth Amendments of the U.S. Constitution and 18 U.S.C. § 242 (Count IV); malicious abuse of process, false arrest and false imprisonment under federal law and supplemental state law (Counts VIII, X); and supplemental state law claims for invasion of privacy; assault and battery; malicious prosecution, negligence, and gross negligence.

Contained within his § 1983 claims Hurst seeks damages for intentional infliction of emotional distress as well as for physical injury (Count V).

I will dismiss the claim against Tammie Morrison, since she is merely identified as an EMT, with no allegations pertaining to her involvement in the event about which Hurst complains.

## **VI. CONCLUSION**

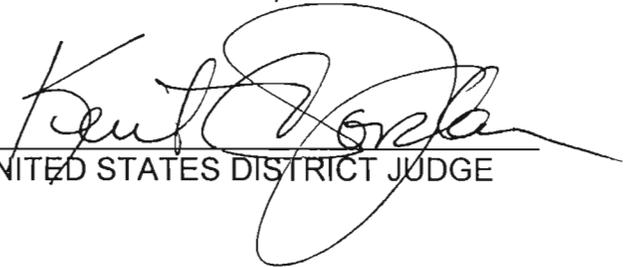
Accordingly, IT IS HEREBY ORDERED as follows:

1. Hurst's Motion to Alter or Amend Judgment (D.I. 122) is denied.

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<sup>1</sup>Hurst also invokes the Eighth Amendment. Excessive force claims arising out of an arrest are analyzed under the Fourth Amendment, *Graham v. Connor*, 409 U.S. 386 (1989); excessive force claims for pretrial detainees are analyzed under the Fourteenth Amendment, *Sylvester v. City of Newark*, 120 Fed.Appx. 419, 423 (3d Cir. 2005), and excessive force claims for those convicted of a crime are analyzed under the Eighth Amendment, *Graham v. Connor*, 490 U.S. at 395 n. 10. The actions Hurst complains of occurred prior to his conviction. See *Hurst v. Delaware*, No. 138,2003, 2003 WL 21810821(Del. 2003).

2. Pursuant to Fed. R. Civ. P. 12(b)(6) the claims against defendant Tammie Morrison are dismissed without prejudice for failure to state a claim upon which relief may be granted.

  
UNITED STATES DISTRICT JUDGE

March 21, 2006  
Wilmington Delaware