IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JERRY A. HURST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-083-KAJ
	)	
CITY OF DOVER, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

I. INTRODUCTION

Plaintiff Jerry A. Hurst ("Hurst") brings this civil rights action pursuant to 42 U.S.C. §1983. He also raises supplemental state claims. Hurst appears *pro se* and on March 1, 2004, was granted *in forma pauperis* status pursuant to 28 U.S.C. § 1915. (D.I. 4). Hurst seeks compensatory and punitive damages, attorney's fees, an award of his costs of suit, unspecified injunctive and declaratory relief, and such other relief as the Court deems appropriate.

On January 24, 2006, I reviewed and screened the complaint pursuant to 42 U.S.C. § 1915. In doing so, I dismissed as frivolous the claims brought against Warden Rick Kearney and the Sussex Correctional Institute, and the malicious prosecution claims brought in Counts IV and VII. I also dismissed as malicious the intentional and/or negligent exposure to tuberculosis claim found in Count V, as Hurst had previously raised that claim in Civil Case No. 03-362-KAJ. That claim was brought against the Sussex Correctional Institute, which has since been dismissed as a defendant. *See Civil No.* 03-362-KAJ

Now before me is Hurst's Motion to Alter or Amend Judgment pursuant to Fed. R. Civ. P. 59(e) and Motion for Certification of an Interlocutory Appeal pursuant to 28 U.S.C. § 1292(b). (D.I. 6.) Hurst asks me to reconsider my Memorandum Order (D.I. 5) of January 24, 2006 dismissing the above claims.

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 I dismissed in my screening order of January 24, 2006. He does not argue that there was an intervening change in the controlling law or that new evidence has come to light. Rather he appears to argue the need to correct a clear error of law or fact or to prevent manifest injustice.

Having considered Hurst's motion, I will not disturb my screening order. None of the arguments raised by Hurst persuade me that my interpretation of the law was erroneous, or that I wrongly understood the factual assertions on which I relied, or that the application of the law to the allegations in the complaint was incorrect. In short, Hurst has not demonstrated any of the grounds necessary to warrant reconsideration and, therefore, his motion is denied. Moreover, upon a further review of the claims dismissed, I find that allowing amendment of the dismissed claims would be futile. *See Grayson v. Mayview State Hosp.,* 293 F.3d 103, 111 (3d Cir. 2002); *Borelli v. City of Reading*, 532 F.2d 950, 951-52 (3d. Cir. 1976).

IV. INTERLOCUTORY APPEAL

Hurst also asks that I certify this matter for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). He asserts that certification could "materially advance the ultimate determination " of the litigation in this case and Civil Case No. 03-362-KAJ, which is also pending in this district court. Additionally, he contends that there are several "controlling question of law as to which there is substantial ground for difference of opinion" and that an interlocutory appeal would be in the interest of judicial economy.

Under 1292(b), I may certify an order for interlocutory appeal if "(1) it involves a 'controlling question of law;' (2) there is 'substantial ground for difference of opinion' with respect to that question; and (3) immediate appeal 'may materially advance the ultimate termination of the litigation.'" 28 U.S.C. § 1292(b)). A "controlling question of law" includes "every order which, if erroneous, would be reversible error on final appeal" *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 755 (3d Cir. 1974). A party's disagreement with the district court's ruling does not constitute 'a substantial ground for a difference of opinion' within the meaning of 1292(b). *P. Schoenfeld Asset Mgmt. LLC v. Cendant Corp.*, 161 F.Supp.2d 355, 360 (D.N.J. 2001). "The difference of opinion must arise out of genuine doubt as to the correct legal standard." *Id.* (citing *Hulmes v. Honda Motor Co., Ltd.*, 936 F.Supp. 195, 207 (D.N.J.1996)).

Hurst contends that there are several controlling questions of law as to which there is substantial ground for difference of opinion. The gist of Hurst's argument is that I erred in the application of existing law to the facts of the case. His disagreement with my ruling is insufficient for certification of an interlocutory appeal. Further, Hurst has not persuaded me that prompt appellate resolution "may materially advance the ultimate termination of the litigation." The screening order merely dismissed those claims that are legally and factually frivolous within the meaning of 28 U.S.C. § 1915, but it allowed Hurst to proceed with claims that may be cognizable under state and federal law. Finally, if Hurst still wishes, he will have the opportunity to appeal when the I enter final judgment in this case. Therefore, his request to certify an appeal pursuant to 28 U.S.C. § 1292(b) is denied.

V. CONCLUSION

Accordingly, IT IS HEREBY ORDERED Hurst's Motion to Alter or Amendment Judgment and Motion for Certification of an Interlocutory Appeal (D.I. 6) is denied.

UNITED STATES DISTRICT JUDGE

March 21, 2006
Wilmington Delaware