IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TABATHA BARNES, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CIV-16-184-HE
	)	
THE CITY OF OKLAHOMA CITY, a municipal corporation, et al.,	)	
	)	
Defendants.	)	

DEFENDANT THE CITY OF OKLAHOMA CITY'S OBJECTION AND RESPONSE TO PLAINTIFFS' MOTION TO RECONSIDER

COMES NOW a Defendant, The City of Oklahoma City, and for its Response to Plaintiffs' Motion For Reconsideration of Order Granting Defendant City's Motion For Summary Judgment, states as follows:

INTRODUCTION

Defendant City filed its Motion for Summary Judgment [Doc. 368] on September 14, 2021. It was forty (40) pages long, and included 115 exhibits. Plaintiffs filed their Response to Defendant City's Motion for Summary Judgment [Doc. 388] on October 20, 2021, which was twenty eight (28) pages long and included 45 exhibits. Defendant City filed its eleven page Reply to Plaintiffs' Response [Doc. 398] on October 27, 2021. This Court entered its Order granting Defendant City's Motion for Summary Judgment [Doc. 405] on December 20, 2021. Now, Plaintiffs file their Motion for Reconsideration, which should be denied.

I. FEDERAL RULE OF CIVIL PROCEDURE 59 STANDARD.

Plaintiffs are requesting the Court to reconsider its grant of summary judgment to Defendant City. Motions for reconsideration are not among the motions recognized by the Federal Rules of Civil Procedure. Indeed, "[s]uch relief is extraordinary and may only be granted in exceptional circumstances." *Searles v. Dechant*, 393 F.3d 1126, 1131 (10th Cir. 2004) (quoting *LaFleur v. Teen Help*, 342 F.3d 1145, 1153 (10th Cir. 2003)). Grounds warranting a motion for reconsideration include: "(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." *Servants of Paraclete v. Doe*, 204 F.3d 1005, 1012 (10th Cir. 2000) (citation omitted). Furthermore, a motion for reconsideration under 59(e) "is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Id*.(citation omitted).

Here, Plaintiffs ostensibly assert that this Court failed to comply with controlling law to view all evidence in the light most favorable to the non-moving party. This assertion is without merit. Plaintiffs do not rely upon newly discovered evidence in support of their Motion. Instead, Plaintiffs really only attempt to revisit issues already addressed and advance arguments that could have been raised in prior briefing. More importantly, Plaintiffs have failed to demonstrate sufficient grounds which warrant reconsideration of this Court's Order granting summary judgment to Defendant City. In sum, Plaintiffs have certainly failed to demonstrate the sort of exceptional circumstances necessary to warrant such extraordinary relief.

II. PLAINTIFFS HAVE FAILED TO DEMONSTRATE SUFFICIENT GROUNDS FOR RECONSIDERATION OF THIS COURT'S ORDER.

Plaintiffs assert that viewing the evidence in a light most favorable to the Plaintiffs, a reasonable jury could return a verdict in their favor regarding deliberate indifference, failure to monitor Holtzclaw after the early intervention program, that the use of force review process was a sham, and that OCPD's complaint referral process was a sham. However, Plaintiffs do not cite to any *new* evidence in support of these contentions, but rather only rely on evidence already in the record.

This lawsuit was filed in 2016. Since the filing of the lawsuit, all parties have engaged in extensive written discovery, and there have been 26 depositions taken. There have been four motions for summary judgment filed by Defendants City, Citty, Bennett and Gregory [Docs. 152, 362, 368, 371] for a total of 140 pages of briefing with approximately 275 Exhibits.[1] There have been three Responses by Plaintiffs [Docs. 159, 388, 390] to these summary judgments for a total of 77 pages of briefing, with approximately 92 Exhibits. There were three Replies filed [Docs. 165, 397 and 398] for a total of 28 pages of briefing. Defendant Bennett was granted summary judgment by Order [Doc. 190] on April 30, 2019. Thereupon, Plaintiffs filed a Motion to Alter Judgment [Doc. 197] on May 28, 2019, which consisted of 23 pages of briefing and 30 exhibits. Defendant Bennett filed an objection and response [Doc. 198] which was 25 pages of briefing and six additional exhibits.

[1] Some exhibits in support of the various motions, responses and replies may be duplicates.

Notwithstanding the above noted filings on or against the City Defendants (excluding Defendant Holtzclaw), there have been at least two Motions for Partial Summary Judgment filed by Plaintiffs Ligons and Johnson [Doc. 289] and Plaintiffs Morris, Hill and Lyles [Doc. 288]on September 16, 2020. These motions had a total of 69 pages of briefing and 40 exhibits. Responses to Plaintiffs' motions for partial summary judgment were filed by various defendants [Docs. 300, 301 and 304] for an additional 26 pages of briefing and 18 exhibits.

Therefore, at a minimum, there have been at least 388 pages of briefing by the parties, plus at least 461 filed exhibits in support of the various motions, responses and replies. Yet now, Plaintiffs make the argument that somehow this Court did not properly consider the evidence. This argument is without merit. Plaintiffs cite no new information, but rather merely additional evidence in support of a position that Plaintiffs made in their summary judgment briefing, or more telling, **failed** to make in their briefing.

In its Order granting City's Motion for Summary Judgment, this Court found that Plaintiffs' allegations against Defendant City under a Section 1983 Municipal Liability, even drawing all inferences from the evidence in favor of the Plaintiffs, did not support and there is no basis for an inference that the City had a custom or practice suggesting deliberate indifference. Nothing that the Plaintiffs have asserted in the current Motion to Reconsider changes any analysis that this Court has undertaken. The assertion by Plaintiffs that this Court made a mistake by making inferences favorable to the City is

simply unfounded.

The Plaintiffs make assertions that are simply untrue. For example, Plaintiffs continue to attempt to argue that Holtzclaw was sufficiently and credibly identified as a suspect in the oral sodomy crime against Terri Morris and no action was taken. The City has credibly presented that on May 24, 2014, Terri Morris was interviewed by patrol officers when Mr. Shelton called 911 during a domestic disturbance. She was high on crack cocaine, and advised the officers that 3-4 days earlier an officer (who she described at 6 feet tall, stocky, dark skinned white male, 40 years of age) had picked her up near the City Rescue Mission after she had smoked crack and raped her. Lt. Holland contacted the on-call Sex Crimes Lieutenant and "ran" down the facts of Ms. Morris' complaint to him. He decided not to send an investigator to the scene. On May 27, 2014, this case was assigned to Det. Gregory, and he began trying to contact Ms. Morris and investigate her complaint. In summary, it was not until July 10, 2014, when Ms. Morris advised the OCPD of the correct location where this sexual assault occurred that the detectives were able to determine that the date of the rape was May 8, 2014, because that was the date an officer—Holtzclaw—ran her name from that location. Plaintiffs' counsel continues to misrepresent the OCPD's investigation into Ms. Morris' complaint. Plaintiffs' counsel believes that Holtzclaw should have been arrested and terminated because he made contact with a woman who initially claimed the incident occurred on a different date and location, refused to be interviewed, and signed a refusal to prosecute form. The Court was correct in deciding that Plaintiffs' evidence does not support an inference that there was a practice of OCPD responding inappropriately to allegations of sexual misconduct, thus concluding

that the Plaintiffs' theories of deliberate indifference by the City is insufficient.

As the City asserted in its Response to Defendant Holtzclaw's Motion to Reconsider [Doc. 413], retired United States District Judge Wayne Alley observed "with dismay the alarming practice and regularity with which motions to reconsider are filed after a decision unfavorable to a party's case" and asked whether "there is some misapprehension widely held in the bar that our court, in ruling on a motion after it is fully briefed, is just hitting a fungo." Wayne Alley, *Letter and Attached Order*, 62 OKLA. B.J., 108, 109 (1991), attached as Exhibit 1. In the Order, Judge Alley opined that attorneys in the Western District of Oklahoma apparently believe a motion to reconsider is a "second chance" at a decision in their favor.

Judge Alley then writes "As this Court has stated, 'despite what [defendant] appears to think, this Court's opinions are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure. Motions such as this reflect a fundamental misunderstanding of the limited appropriateness of motions for reconsideration….' Citing *Quaker Alloy Casting Co. v. Gulfco Industries, Inc*., 123 F.R.D. 282, 288 (N.D.Ill. 1988)." *Id.*

"A court's rulings 'are not intended as first drafts, subject to revision and reconsideration at a litigant's pleasure." *Quaker Alloy Casting v. Gulfco Industries, Inc*., 123 F.R.D. 282, 288 (N.D.Ill.1988). A motion to reconsider is appropriate if the court has obviously misapprehended a party's position, the facts, or applicable law, or if the party produces new evidence that could not have been obtained through the exercise of due diligence.));'" *United States v. Real Prop.*, No. 17-CV-19-J, 2018 U.S. Dist. LEXIS

241695 (D. Wyo. Oct. 5, 2018).

Plaintiffs clearly have not met this standard. Plaintiffs have not presented any new facts, have not pointed the Court to a change in Tenth Circuit precedent or constitutional law, or alleged circumstances showing clear error or manifest injustice resulting from the Court's ruling on Defendant City's Motion for Summary Judgment. In Plaintiffs' motion to reconsider, Plaintiffs' have only renewed many of the arguments already made and are attempting to assert old theories as new arguments that could have been made in Response to Defendant City's Motion for Summary Judgment. All of these arguments have been analyzed by the Court, and "The Court is not required to consider new arguments that could have been presented originally." *United States v. Carr,* No. 09-40071-02-JAR, 2010 U.S. Dist. LEXIS 33578 (D. Kan. Apr. 5, 2010). Therefore this Court should overrule Plaintiffs' Motion for Reconsideration.

III. PLAINTIFFS' STATE LAW CLAIMS SHOULD NOT BE REMANDED

As noted in its Reply, the City continues to maintain that only Plaintiffs Ligons and Hill actually ever filed any Notice of Tort Claim, and only Plaintiff Ligons responded to the City's assertion that Defendant Holtzclaw's actions were outside the scope of his employment. The Court found that there is no plausible basis for concluding that the actions of Holtzclaw at issue in this case were within the scope of his employment, and the Plaintiffs have offered no new evidence to show otherwise. Therefore, Defendant City respectfully requests this Court overrule Plaintiffs' Motion to Reconsider and request that no state law claims be remanded to State Court.

CONCLUSION

Plaintiffs do not offer any argument that there is a controlling or significant change in the law or the facts since this Court entered summary judgment in favor of Defendant City. Plaintiffs have raised absolutely nothing new – no new law and no new fact – to support their motion to reconsider. All issues and argument were addressed, or should have been addressed, in the seventeen pleadings consisting of 388 pages of briefing, as well as the 461 filed exhibits. Therefore, Defendant City requests this Court overrule Plaintiffs' Motion to Reconsider.

Respectfully Submitted,

Kenneth Jordan
MUNICIPAL COUNSELOR

/s/ Sherri R. Katz
Sherri R. Katz, OBA # 14551
Richard N. Mann, OBA #11040
Thomas Lee Tucker, OBA # 20874
Assistant Municipal Counselors
200 N. Walker Ave., 4th Floor
Oklahoma City, OK 73102
(405) 297-2451
sherri.katz@okc.gov
richard.mann@okc.gov
thomasltucker@okc.gov
Attorneys for Defendant City

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2022, I electronically transmitted the attached Defendant City's Objection and Response to Plaintiffs' Motion for Reconsideration of Order Granting Defendant City's Motion for Summary Judgment to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants on file herein.

/s/ Sherri R. Katz