

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER MAFFUCCI, et al. : CIVIL ACTION
: :
v. : :
: :
CITY OF PHILADELPHIA, et al. : NO. 98-CV-2718

MEMORANDUM AND ORDER

J. M. KELLY, J.

JUNE 8, 1999

Presently before the Court is Defendants' Motion for Reconsideration of the Court's grant of Plaintiffs' motion for summary judgment on the issue of whether Mary-Rita D'Alessandro ("D'Alessandro"), a Deputy Commissioner in Philadelphia's Department of Licenses & Inspections ("L&I"), and Dominic Verdi ("Verdi"), an acting District Supervisor in L&I, could avail themselves of the qualified immunity defense. For the reasons that follow, Defendants' motion is denied.

To prevail on its motion for reconsideration, Defendants must point to a manifest error of law or fact, present newly available evidence, or cite to an intervening change in the controlling law. See Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir.), cert. denied, 476 U.S. 1171 (1986); Drake v. Steamfitters Local Union No. 420, No. 97-CV-585, 1998 WL 564486, at *3 (E.D. Pa. Sept. 3, 1998). The Court will reconsider its earlier ruling to prevent a manifest injustice. See Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). If Defendants' motion merely states a dissatisfaction with the Court's ruling, however, they have failed to present a proper basis to seek reconsideration. See Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993).

Defendants have failed to carry their burden. They emphasize their view of how exacting a standard the qualified immunity defense presents, and argue the record was not sufficiently developed for the Court to conclude D' Alessandro and Verdi knowingly violated the law. (Defs.' Mem. Supp. Mot. Reconsid. at 7-8.) The Court, however, never decided D' Alessandro and Verdi knowingly violated the law. Maffucci v. City of Phila., No. 98-CV-2718, slip op. at 12 (E.D. Pa. May 20, 1999). Instead, the Court found they "knew or should have known" they were required to obtain a search warrant, which plainly falls within the "knowing violation" or "plainly incompetent" standard of Malley v. Briggs, 475 U.S. 335, 341 (1986). Indeed, Defendants' conduct seems to fall squarely into the latter category. Both D' Alessandro and Verdi were charged with knowing the law, she by virtue of her practice of law, he by virtue of his position in L&I, and yet neither seemed overly familiar with Camera v. Municipal Court, 387 U.S. 523 (1967), which the Supreme Court decided over thirty years ago. Even if they hadn't reflected on Supreme Court rulings in the field of administrative searches, however, the City's own Code directed them to secure a warrant whenever homeowners declined to allow L&I to search their homes. Maffucci, slip op. at 12. Arguing this case is one in which the state courts thwarted Defendants' best intentions, Defendants state Verdi knew this and hoped the process he set in motion ultimately would lead to a search warrant. (Defs.' Mem. Supp. Mot. Reconsid. at 8-9.) As Plaintiffs pointed out in their Motion for Partial Summary Judgment, however, at no time did any Defendant, including Verdi, follow any of the warrant procedures set forth in the Pennsylvania rules. The Court accordingly finds Defendants' position unpersuasive.

The Court similarly is not convinced by Defendants' remaining argument that the Court prematurely considered the applicability of the qualified immunity defense. Defendants seem to

claim either they alone could raise the issue or, even if the Court believed Defendants did not enjoy qualified immunity, the Court should have let the jury hear it anyway. Id. at 5-6.

Defendants' protests, however, ignore the fact that Plaintiffs explicitly sought summary judgment against D'Alessandro and Verdi individually, and, because Plaintiffs' request was inexorably tied to the issue of qualified immunity, they briefed the issue extensively. (See Pls.' Mem. Supp. Mot. Partial Summ. J. at 28-30.) The fact that Defendants chose not to respond with equal vigor does not now permit them to claim qualified immunity is a defense to be raised only at trial. In fact, the Court is obliged to decide the issue of qualified immunity as early in a litigation as possible. Anderson v. Creighton, 483 U.S. 635, 646 n.6 (1987). The Court finds Defendants' argument presents little merit, and will deny Defendants' motion for reconsideration.

An Order follows.

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ORDER

AND NOW, this 8th day of June, 1999, upon consideration of Defendants' Motion for Reconsideration (Document No. 53), it is hereby **ORDERED** Defendants' motion is **DENIED**.

BY THE COURT:

JAMES McGIRR KELLY, J.