

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

BOBBIE L. SIMS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
SUPERINTENDENT MARTIN	:	
DRAGOVICH, et al.,	:	
Defendants	:	NO. 95-CV-6753

MEMORANDUM AND ORDER

J. M. KELLY, J.

JUNE 24, 1999

Presently before the Court is Defendants' Motion for Reconsideration of the Court's partial denial of Defendants' Motion for Summary Judgment. Defendants urge the Court to reconsider that portion of its June 7, 1999, Memorandum in which the Court found a genuine issue of material fact existed regarding whether Defendants were substantially motivated by Plaintiff's lawsuits to issue a misconduct, sanction Plaintiff, and uphold that sanction on administrative appeal. 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 contend the Court improperly found the documents Plaintiff complained were missing were facially different than those Defendants discovered, and that this difference constituted the Court's sole basis for partially denying Defendants' motion. Defendants argue that the Defendant corrections officer who issued the misconduct reasonably could have believed the documents the search team found were those Plaintiff claimed had been stolen. Defendants continue that the hearings officer, Defendant Mary Canino, could have come to her decision after finding the corrections officer, and not Plaintiff, credible. As for the Defendants who reviewed Canino's sanction, they were limited by the record before them, Defendants argue, and therefore no genuine issue of material fact could possibly exist regarding their substantial motivation.

These arguments ultimately may persuade a jury, but Defendants have failed to carry their burden on this motion. As the Court explained in its earlier memorandum, Plaintiff, in this instance alone, successfully pointed to evidence that might support a reasonable jury's verdict in his favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Defendants seek to discount that evidence, seemingly urging the Court to elevate their credibility over Plaintiff's.¹ That determination, however, is exclusively reserved for the jury. To accomplish what Defendants request, the Court would be required to resolve all inferences from the record in their favor. This plainly is inappropriate, and the Court accordingly will not alter its partial grant of

¹Apparently counting on the Court to weigh credibility, Defendants claim Canino's alleged statements concerning Plaintiff's lawsuits by itself is not enough to withstand summary judgment. These alleged statements, Defendants note, were not enough for Plaintiff to withstand summary judgment concerning another misconduct, and so they should be given little weight here. This argument, however, ignores the fact that the Court found summary judgment was appropriate on the other misconduct claim because the record demonstrated no genuine issue of material fact existed that Defendants issued the misconduct and ordered and upheld the sanction for legitimate, non-retaliatory reasons. The same is not true here, and therefore Canino's alleged statements take on a different significance.

summary judgment.

An Order follows.

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DRAGOVICH, et al.,	:	
Defendants	:	NO. 95-CV-6753

ORDER

AND NOW, this 24th day of June, 1999, upon consideration of Defendants' Motion for Reconsideration (Document No. 60), it is hereby **ORDERED** that Defendants' motion is **DENIED**.

BY THE COURT:

JAMES McGIRR KELLY, J.