

VERMONT SUPERIOR COURT  
Windham Unit  
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CIVIL DIVISION  
Case No. 22-CV-04364

Jeffrey Rivard v. Susan Smallheer, et al

## ENTRY REGARDING MOTION

Title: Motion to Reconsider (Motion: 9)  
Filer: Jeffrey M Rivard  
Filed Date: October 02, 2023

This matter comes before the court on Plaintiff's motion requesting reconsideration of this court's special order to strike Plaintiff's complaint pursuant to Vermont's Anti-SLAPP Statute. 12 V.S.A. § 1041. Defendants oppose the motion. The motion is **DENIED**.

### I. Standard

The Vermont Rules of Civil Procedure do not include a formal standard for post-judgment motions to reconsider, so courts often analyze them under Rule 59, under which the court has broad power to amend or alter a decision. See *Drumheller v. Drumheller*, 2009 VT 23, ¶ 36, 185 Vt. 417; V.R.C.P. 59. The rule allows action to "relieve a party against the unjust operation of a record resulting from the mistake or inadvertence of the court and not the fault or neglect of a party." *Northern Sec. Ins. Co. v. Mitec Electronics, Ltd.*, 184 Vt. 303, 319 (2008). A motion to reconsider, however, "should not be granted where the moving party seeks solely to relitigate an issue already decided." *Latouche v. North Country Union High School Dist.*, 131 F. Supp. 568, 569 (D. Vt. 2001). Indeed, the United States District Court for the District of Vermont has rightly noted that "[t]he standard for granting [a motion to reconsider] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Latouche*, 131 F. Supp. at 569 (quoting *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir.1995)). Ultimately, a motion to reconsider should only be granted to the extent "justice requires." *Putney School, Inc. v. Schaaf*, 157 Vt. 396, 407 (1991).

### II. Procedural History

Plaintiff filed his Complaint in Windham Superior Court on December 4, 2022, alleging libel, defamation, negligence, and false light. Plaintiff's Complaint at 1. Defendants filed both a

Motion to Dismiss and a Motion to Strike the Complaint pursuant to 12 V.S.A. § 1041(a)(1) on January 17, 2023. This Court granted Defendants' special motion to strike on April 30, 2023, and dismissed Plaintiff's Complaint pursuant to 12 V.S.A. §1041(a)(1). Entry Regarding Motion dated April 30, 2023. Plaintiff filed a Notice of Appeal on May 1, 2023, which was docketed by the Vermont Supreme Court as 23-AP-149 on May 2, 2023. The Vermont Supreme Court affirmed the Superior Court's order on September 15, 2023. *Rivard v. Brattleboro Reformer & Susan Smallheer*, No. 2023-149, 2023 WL 5994216 (Vt. September 15, 2023) (unpublished mem.). The same court also denied Plaintiff's Motion to Reargue on September 15, 2023. Entry Order in *Rivard v. Brattleboro Reformer & Susan Smallheer*, No. 2023-149, 2023 WL 5994216 (Vt. October 2, 2023) (unpublished mem.). Plaintiff now seeks to reconsider this court's special order to strike Plaintiff's complaint pursuant to Vermont's Anti-SLAPP Statute, 12 V.S.A. § 1041, and in so doing, to disturb the finality of the Vermont Supreme Court ruling on appeal on that issue.

### III. Analysis

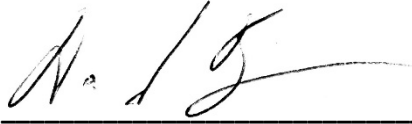
Plaintiff here cites no new controlling decisions nor data that the Court overlooked that could reasonably be expected to alter the conclusion previously reached by this court. Rather, it seems that Plaintiff, not only, seeks to relitigate the issues that this court has already decided in its order granting the special motion to strike, but also to relitigate issues that the Vermont Supreme Court settled on appeal. See *Rivard v. Brattleboro Reformer & Susan Smallheer*, No. 2023-149, 2023 WL 5994216 (Vt. September 15, 2023). Indeed, in his motion, Plaintiff seems to simply reiterate the issues surrounding his criminal case and states, broadly, that the court's decision was somehow "erroneous." Plaintiff's Motion to Reconsider. The court does not see any mistake or inadvertent error in its previous decision, nor does the court see any other reasons that would support granting this motion.

To the extent that Plaintiff seeks this court to override the finality of the decision on appeal of the Vermont Supreme Court in the instant case, the court declines to do so. Indeed, "[u]nder the law-of-the-case doctrine, questions necessarily involved and already decided ... will not be revisited ...." *Whippie v. O'Connor*, 2011 VT 97, ¶ 7, 190 Vt. 600 (mem.). The doctrine is a "rule of general application that a decision in a case of last resort is the law of that case on the points presented throughout all the subsequent proceedings." *Coty v. Ramsey Assocs., Inc.*, 154 Vt. 168, 171 (1990) (quotation and alteration omitted). Simply put, "when [the Vermont Supreme Court] remands a case, [its] decision is the law of that case on the points presented throughout all the subsequent proceedings." *In re Fitzgerald*, 2020 VT 14, ¶ 35, 213 Vt. 598 (quotation omitted). Thus, under either analysis, the motion to reconsider must be denied.

Order

For the foregoing reasons, Plaintiff's motion is **DENIED**.

Signed electronically October 20, 2023 pursuant to V.R.E.F 9(d).

A handwritten signature in black ink, appearing to read 'D. Barra', is written over a horizontal line.

**David Barra**  
**Superior Court Judge**