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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ROBERT E. BIEHL,)	
)	
Plaintiff,)	
)	
vs.)	
)	Case No. 06-4135-JAR
SALINA POLICE DEPARTMENT and)	
OFFICER BRAD MCCARY,)	
)	
Defendants.)	
_____)	

**MEMORANDUM AND ORDER DENYING PLAINTIFF’S MOTION FOR
RECONSIDERATION**

This matter comes before the Court on plaintiff’s Motion for Reconsideration (Doc. 39). On July 19, 2007, this Court granted defendants’ motion to dismiss as uncontested under the local rules¹ and because plaintiff failed to state a claim for relief under 42 U.S.C. § 1983. (Doc. 36.) Plaintiff now moves for reconsideration of that order alleging that he stated a claim against defendants and asking that the case be reopened.

A motion under Fed. R. Civ. P. 59(e) to alter or amend the judgment is essentially a motion for reconsideration.² A district court has “considerable discretion” when determining whether to grant or deny a Rule 59(e) motion.³ A motion to alter or amend judgment pursuant to Rule 59(e) may be granted only if the moving party can establish: (1) an intervening change in

¹See D. Kan. R. 7.4 (“If a respondent fails to file a response within the time required . . . , the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.”).

²*Schweitzer-Reschke v. Avnet, Inc.*, 881 F. Supp. 530, 532 (D. Kan. 1995).

³*Brown v. Presbyterian Healthcare Servs.*, 101 F.3d 1324, 1332 (10th Cir. 1996), *cert. denied*, 520 U.S. 1181 (1997).

the controlling law; (2) the availability of new evidence that could not have been obtained previously through the exercise of due diligence; or (3) the need to correct clear error or prevent manifest injustice. “A motion to reconsider is not a second opportunity for the losing party to make its strongest case, to rehash arguments, or to dress up arguments that previously failed.”⁴

In his motion, plaintiff fails to show that the Court should alter or amend the judgment under any of the three bases for granting a Rule 59(e) motion. Plaintiff asks that this case be reopened so that it may be heard by a jury. To the extent plaintiff contends that reconsideration is appropriate to avoid manifest injustice,⁵ he has not presented any evidence to support such an argument. Thus, the Court denies plaintiff’s motion for reconsideration.⁶

IT IS THEREFORE ORDERED BY THE COURT that plaintiff’s Motion for Reconsideration (Doc. 39) is **DENIED**.

IT IS SO ORDERED.

Dated this 31st day of July 2007.

S/ Julie A. Robinson
Julie A. Robinson
United States District Judge

⁴*Baker v. Via Christi Regional Med. Ctr.*, No. 06-2168-KHV, 2007 WL 2137789, at *1 (D. Kan. July 23, 2007) (citing *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991)).

⁵Because plaintiff is a *pro se* litigant, the Court liberally construes his pleadings and applies a less stringent standard than that which is applicable to attorneys. *Whitney v. New Mexico*, 113 F.3d 1170, 1173 (10th Cir. 1997).

⁶*See Baker*, 2007 WL 21377889, at *1 (“Plaintiff has pointed to no facts to support his argument that the Court must reverse its decision to grant summary judgment in order to avoid manifest injustice.”).