

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

**TERRANCE J. KELLY,**

**Plaintiff,**

**v.**

**CASE NO. 23-3142-JWL**

**DAN SCHNURR, et al.,**

**Defendants.**

**MEMORANDUM AND ORDER**

Plaintiff proceeds pro se in this prisoner civil rights action under 42 U.S.C. § 1983. At the time of filing, Plaintiff was in custody at the Hutchinson Correctional Facility (“HCF”) in Hutchinson, Kansas. Plaintiff alleges that, over the course of 29 years, he has been repeatedly placed “in supermax under fraudulent, unsubstantiated and false reports written by staff containing libelous information and resulting in slanderous remarks.” Plaintiff asserts claims for violation of his due process rights under the Fourteenth Amendment, violation of his Eighth Amendment right to be free from cruel and unusual punishment, and violation of his right to equal protection under the Fifth Amendment.

The Court entered a Memorandum and Order and Order to Show Cause (Doc. 4) (“MOSC”), granting Plaintiff the opportunity to either show good cause why his Complaint should not be dismissed or to file a proper amended complaint. Plaintiff filed a Response to the MOSC (Doc. 9). On January 18, 2024, the Court entered a Memorandum and Order (Doc. 12) finding that the Complaint failed to cure the deficiencies discussed in the MOSC and dismissing this matter for failure to state a claim. This matter is before the Court on Plaintiff’s Motion to Alter or Amend Judgment (Doc. 14).

Local Rule 7.3 provides that “[p]arties seeking reconsideration of dispositive orders or judgments must file a motion pursuant to Fed. R. Civ. P. 59(e) or 60.” D. Kan. Rule 7.3(a). Because Plaintiff’s motion was filed within 28 days after the entry of the order, the Court will treat it as a motion under Rule 59. *See* Fed. R. Civ. P. 59(e) (“A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.”).

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 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. *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). A motion under Rule 59(e) is not to be used to rehash arguments that have been addressed or to present supporting facts that could have been presented in earlier filings. *Id.* Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly. *See Temple v. HydroChem, Inc.*, 367 F.3d 473, 479 (5th Cir. 2004); *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1242 (10th Cir. 2006); *Zucker v. City of Farmington Hills*, 643 F. App’x 555, 562 (6th Cir. 2016) (relief under R. 59(e) is rare).

Plaintiff has failed to show that he is entitled to relief from the Court’s judgment dismissing this matter. Plaintiff argues that he “did state his claims clearly . . . so again Judge Lungstrum shows bias in not granting Mr. Kelly his relief as Mr. Kelly did state claims upon [which] relief can be granted with exhibits to back up every claim he states.” (Doc. 14, at 1-2.) Plaintiff’s argument is completely conclusory. *See Ysais v. Richardson*, 603 F.3d 1175, 1180 (10th Cir. 2010) (stating that district court did not abuse its discretion in denying a motion under Rule 59(e) based only on conclusory statements).

Plaintiff does not meet the exacting standard for relief under Fed. R. Civ. P. 59(e). In sum, Plaintiff has failed to meet the standard required for this Court to alter or amend its January 18, 2024 Order and Judgment, and that ruling stands.

**IT IS THEREFORE ORDERED BY THE COURT** that Plaintiff's Motion to Alter or Amend Judgment (Doc. 14) is **denied**.

**IT IS SO ORDERED.**

**Dated February 2, 2024, in Kansas City, Kansas.**

**S/ John W. Lungstrum**  
**JOHN W. LUNGSTRUM**  
**UNITED STATES DISTRICT JUDGE**