

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

JANET JENKINS et al.,

Plaintiffs,

v.

KENNETH L. MILLER et al.,

Defendants.

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CIVIL CASE NO. 2:12-cv- 00184-wks

March 26, 2014

**DEFENDANT LINDA M. WALL’S REPLY TO
PLAINTIFFS’ COMBINED RESPONSE TO RENEWED MOTIONS TO DISMISS**

Defendant Linda M. Wall, through the undersigned counsel, hereby replies to Plaintiffs’ Combined Response to Renewed Motions to Dismiss.

ARGUMENT

First, Wall adopts the legal arguments set forth in Defendants Philip Zohiates, Victoria Hyden, and Response Unlimited, Inc.’s Reply Memorandum in Support of Their Renewed Motion to Dismiss dated March 26, 2014 (ECF #146). The arguments therein apply with equal force to Wall.

Second, Plaintiffs mischaracterize Defendants’ renewed motions as “motions to reconsider.” *See* Response at 1-2. However, they are not motions to “reconsider” but rather motions seeking relief from the law of the case based on a change in controlling law or, alternatively, to correct a clear error of law or to prevent manifest injustice in light of an intervening Supreme Court decision issued four (4) months after Defendants’ original motions to dismiss were denied. Consequently, the renewed motions are not limited by the fourteen (14) day filing requirement set forth in Local Rule 7(c).

Under the law-of-the-case doctrine, “when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case.” *United States v. Carr*, 557 F.3d 93, 102 (2d Cir. 2009) (internal quotation marks omitted); *United States v. Plugh*, 648 F.3d 118, 123-24 (2d Cir. 2011) (same). The doctrine is “driven by considerations of fairness to the parties, judicial economy, and the societal interest in finality.” *Carr*, 557 F.3d at 102. “A court's reconsideration of its own earlier decision in a case may, however, be justified in compelling circumstances, consisting principally of (1) an intervening change in controlling law, (2) new evidence, or (3) the need to correct a clear error of law or to prevent manifest injustice.” *Id.* Application of the doctrine is “discretionary and does not limit a court's power to reconsider its own decisions prior to final judgment.” *Sagendorf-Teal v. County of Rensselaer*, 100 F.3d 270, 277 (2d Cir. 1996) (internal quotation marks omitted). This case presents a “compelling circumstance” in which the law of the case should be set aside because the assertion of personal jurisdiction here plainly does not comport with due process requirements.

Plaintiffs assert that *Walden v. Fiore*, _ U.S. __, 134 S.Ct. 1115, 188 L.Ed 2d 12 (2014) “does not change the law regarding personal jurisdiction” but rather “clarifies the minimum contacts standard and distills it into two factors, neither of which is new.” Response at 2. Regardless of whether *Walden* may be characterized as a change in controlling law, it plainly demonstrates that the minimum contacts necessary to comport with due process are lacking here, and that the Court’s denial of Wall’s original motion to dismiss was a “clear error of law.” Moreover, continued assertion of personal jurisdiction over Wall in the absence of the required minimum contacts will result in “manifest injustice.”

Third, Plaintiffs’ attempts to tie Wall to Vermont are unavailing. There are no allegations in either the Amended Complaint or Second Amended Complaint that even remotely satisfy the

due process requirement that Wall's conduct be intentionally directed at the forum state: "Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State." *Walden*, 134 S.Ct. at 1123 (quoting *Burger King Corp. v. Rudzewicz*, 471 U. S. 462, 475 (1985) (internal quotation marks omitted)). That Jenkins lived in Vermont or that Wall's alleged actions had an effect on an order of a Vermont court was nothing more than "random, fortuitous, or attenuated." The alleged actions of Wall had nothing whatsoever to do with where Jenkins lived or the state that issued the custody orders. In short, Wall had no contacts with the State of Vermont sufficient for assertion of personal jurisdiction.

CONCLUSION

The burden is on Plaintiffs to prove the existence of personal jurisdiction. Plaintiffs alleged no facts demonstrating that Wall may be haled into this Court based on her own affiliation with Vermont. Wall's renewed motion to dismiss should be granted.

FOR THE DEFENDANT LINDA WALL,

/s/ Michael J. DePrimo

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CERTIFICATE OF SERVICE

I hereby certify that, on March 26, 2014, I electronically filed with the Clerk of the Court a Reply to Plaintiff's Combined Response to Renewed Motion to Dismiss on behalf of Defendant Linda M. Wall, and service of such filing shall be provided by CM/ECF via Notice of Electronic Filing (NEF) to the following NEF counsel of record:

Ritchie E. Berger, Esq.	Thomas E. McCormick, Esq.
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Dated and signed at Hamden, CT.

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