

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, ET AL.,
Plaintiff,

v.

KENNETH L. MILLER, ET AL.,
Defendant.

Docket No. 2:12-cv-184

PLAINTIFFS' RESPONSE TO DEFENDANT PHILIP ZODHIATES, VICTORIA
HYDEN AND RESPONSE UNLIMITED, INC.'S MOTION TO RECONSIDER AND
REQUEST FOR SANCTIONS

NOW COME Plaintiffs Janet Jenkins, et al., by and through undersigned counsel, and respectfully request that the Court deny the request to reconsider by Defendants Philip Zodhates, Victoria Hyden, and Response Unlimited, Inc. Plaintiffs further request that they be awarded sanctions in the form of attorney's fees.

MEMORANDUM

"The standard for granting a motion to reconsider is strict, and reconsideration is generally denied unless the moving party points 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." *Schrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir.1995). If the moving party is seeking solely to re-litigate an issue already decided, the court should deny the motion for reconsideration and adhere to its prior decision. *Id.* "A court is justified in reconsidering its previous ruling if: (1) there is an intervening change in the controlling law; (2) new evidence not previously available comes to light; or (3) it

becomes necessary to remedy a clear error of law or to prevent obvious injustice.” *Hester Indus., Inc. v. Tyson Foods, Inc.*, 160 F.R.D. 15, 16 (N.D.N.Y.1995) (citation omitted).

Here, the Defendants cite no new law or data that the Court might have overlooked. Instead, the Defendants point out what the Court in this case already knows: that there has been some level of media interest in this case over the years and that this interest continues. The fact that the Associated Press called the Defendants should in no way be construed against Janet Jenkins. She is not seeking media attention, and the Defendants baselessly imply that she would plan to release documents to the press to prevent a fair trial. Though such considerations do not justify reconsideration of the protective order on any level, Plaintiff would note that the Associated Press also telephoned her recently, and that call was not returned.

Defendants are seeking to limit Janet Jenkins’s ability to discuss information about her daughter, claiming that it is necessary for a fair trial that is to occur in Buffalo, NY – a jurisdiction with which Ms. Jenkins has no ties whatsoever. Plaintiff Jenkins asserts that the instant Motion to Reconsider is nothing but a bad faith attempt to delay her obtaining information that the Court has ordered to be turned over to her, and that she has every right to view. It is also an attempt to hinder the prosecution of the criminal case by potentially restricting the things that Plaintiff is permitted to say to the Government about her own family court case. From Defendant’s representations in their Motion to Reconsider, it is very likely that there will be significant overlap between documents and information that is already known to the Plaintiff, and information that is contained in Response Unlimited Inc.’s documents. Then, Plaintiff would be in a situation where she would have to prove whether the information she discussed with the government was from her own life, previous litigation,

or from a document that she reviewed. This would significantly interfere with her ability to communicate with the government as a witness in a matter that is extremely important to her, that concerns her life and her child. For this reason, a protective order would place Janet Jenkins in an untenable situation.

It should be noted that Defendants previously entered into an agreement that they would provide the documents to the Plaintiff within two weeks of the Court's decision on the Motion to Stay. Plaintiff reminded Defendant of this agreement, and re-stated the understanding that the documents would be turned over by today, April 21 (2 weeks since the Court's order). Defendant did not reply to that reminder, but filed the instant Motion instead. That this filing came a full two weeks since the Court's order suggests that they were perfectly aware of their previous promise, and sought to delay and then avoid it entirely by filing at the expiration of the two weeks (and just 7 minutes after the reminder email was sent by Attorney Star). Defendants are acting in bad faith, are failing to honor agreements and are taking up the Court's time and Plaintiff's resources with frivolous motions. Plaintiff's request sanctions against Defendants in the form of attorney's fees and costs incurred in responding to this motion, along with other sanctions as this Court finds appropriate.

DATED at Middlebury, Vermont this 22nd day of April, 2015.

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CERTIFICATE OF SERVICE

I, Katherine B. Kramer, Esq., counsel for Plaintiff Janet Jenkins, for herself and as next friend of Isabella Miller-Jenkins, a/k/a Isabella Miller, hereby certify that I caused the foregoing *PLAINTIFFS' RESPONSE TO DEFENDANT PHILIP ZODHIATES, VICTORIA HYDEN AND RESPONSE UNLIMITED, INC.'S MOTION TO RECONSIDER AND REQUEST FOR SANCTIONS* to be filed with the Court using the CM/ECF electronic filing system, which will provide electronic notification of such filing(s) to Counsel of Record for the Defendants, and to all other registered users.

Dated at Middlebury, Vermont, this 22nd day of April, 2015.

/s/ Katherine B. Kramer

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