

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37625

ROBIN JOY JAMES,	)	2011 Unpublished Opinion No. 579
	)	
Plaintiff-Appellant,	)	Filed: August 11, 2011
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
SCOTT GROVER, D.O. AND V. DWAYNE	)	THIS IS AN UNPUBLISHED
BOHMAN, M.D.,	)	OPINION AND SHALL NOT
	)	BE CITED AS AUTHORITY
Defendants-Respondents.	)	
	)	

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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Darren B. Simpson, District Judge.

Order denying motion to reconsider, affirmed.

Robin Joy James, Blackfoot, pro se appellant.

Donald F. Carey of Carey Perkins, LLP, Idaho Falls, for respondent Grover.

Derek J. Williams of Snow, Christensen & Martineau, Salt Lake City, Utah, for respondent Bohman.

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GUTIERREZ, Judge

Robin Joy James appeals from the district court’s order denying her motion to reconsider. For the reasons set forth below, we affirm the district court’s order denying James’ motion to reconsider.

I.  
**BACKGROUND**

On May 4, 2001, Dr. Scott Grover diagnosed James with Crohn’s Disease and performed surgery on her on May 18, 2001. On March 21, 2007, James underwent another surgery wherein it was allegedly discovered that she did not have Crohn’s Disease, but rather that a necrotic section of her bowel, which should have been discarded during the previous surgery, remained inside her body. On March 20, 2009, James filed a medical malpractice complaint against Grover and Dr. Dwayne Bohman. In her complaint, James alleged that during the May 18, 2001

surgery Grover left a foreign object in her body, namely a necrotic section of bowel, which was not discovered until March 21, 2007.

Bohman filed a motion to dismiss in which he contested personal jurisdiction. A stipulation to dismiss Bohman was signed by Bohman's and James' attorneys, and orally stipulated to by Grover's attorney. Grover also filed a motion to dismiss pursuant to Idaho Rules of Civil Procedure 12(b)(6) and 56(b), which was set for hearing. James never responded to Grover's motion to dismiss. However, four days prior to the hearing on Grover's motion, James filed a motion to continue due to a conflict with her attorney. The district court denied the motion to continue. After the hearing, the district court entered an order granting Grover's motion to dismiss based on the conclusion that James' claim was barred by the statute of limitations. Subsequently, the district court also entered separate orders dismissing Bohman based upon the stipulation of the parties and granting James' attorney's permission to withdraw, and entered a final judgment of dismissal. James sent a letter to the district court requesting that it reconsider its ruling granting Grover's motion to dismiss. The district court treated the letter as a formal pro se motion to reconsider and assumed that James also sought to have the court reconsider its order dismissing Bohman based upon stipulation of the parties. Ultimately, the district court denied James' motion to reconsider. James appeals the district court's order denying her motion to reconsider.

## II.

### DISCUSSION

A motion to reconsider a dismissal order should be treated as a motion to alter or amend a judgment under Idaho Rules of Civil Procedure 59(e)<sup>1</sup> if the motion was timely filed. *Ross v. State*, 141 Idaho 670, 671, 115 P.3d 761, 762 (Ct. App. 2005). Idaho Rules of Civil Procedure 59(e) provides a trial court a mechanism to correct legal and factual errors occurring in proceedings before it. This Court will not disturb the decision on appeal providing the trial court recognized the matter as discretionary, acted within the outer boundaries of the court's

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<sup>1</sup> It appears the parties proceeded on I.R.C.P. 11(a)(2)(B) in the proceedings below, which concerns reconsideration of interlocutory orders. *See generally Johnson v. Lambros*, 143 Idaho 468, 471-73, 147 P.3d 100, 103-05 (Ct. App. 2006) (noting distinction between motions to reconsider brought under I.R.C.P. 11(a)(2)(B) versus I.R.C.P. 59(e).)

discretion, and reached its conclusion through an exercise of reason. *Slaathaug v. Allstate Ins.*, 132 Idaho 705, 707, 979 P.2d 107, 110 (1999).

The district court denied James' motion to reconsider stating:

James suggests that the "records," whatever they may be, are incorrect. However, James does [not] articulate what is inaccurate about the records. Likewise, James fails to specify what inconsistencies exist and/or how the alleged misrepresentation of her attorney would change the outcome of the Court's prior rulings. Generalized statements are insufficient to sustain a motion to reconsider. As such, James' *Motion to Reconsider* should be denied.

Because I.R.C.P. 59(e) motions are brought after final judgment, new evidence may not be presented with such motions. *Lowe v. Lym*, 103 Idaho 259, 263, 646 P.2d 1030, 1034 (Ct. App. 1982). In her motion to reconsider, James asserted that her attorney misrepresented her, that the district court's rulings were based on incorrect records, and that there were inconsistencies in the records obtained from her attorney. However, the record reflects that James failed to present any authority for the district court to consider specifically addressing the basis for dismissal--that is, the statute of limitations. Not having been presented with any reason to doubt the correctness of its initial order, the district court properly denied James' motion to reconsider.

### III.

#### CONCLUSION

The district court did not abuse its discretion in denying James' motion to reconsider. James failed to meet her burden justifying a reconsideration of the district court's rulings. Accordingly, we affirm the district court's denial of James' motion to reconsider.

Judge LANSING and Judge MELANSON **CONCUR.**