

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

PETER S. JARMAK,

Plaintiff,

v.

REBECCA H. RAMOS A/K/A REBECCA CLARKE
A/K/A REBECCA JOHNSON,

Defendant.

CASE NO. 6:10-cv-00048

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court upon Plaintiff's Rule 59(e) Motion to Reconsider Order of Summary Judgment (docket no. 29). The parties have stipulated that a hearing is unnecessary and that the motion may be decided on the basis of the briefs they have submitted (docket no. 35). I have fully considered the arguments and authorities set forth in the parties' filings. For the following reasons, I will deny Plaintiff's Motion to Reconsider.

I. BACKGROUND

On October 1, 2010, Plaintiff Peter Jarmak ("Plaintiff") filed suit against Defendant Rebecca Ramos ("Defendant") in negligence for injuries he suffered on October 4, 2008 as a result of falling through a hammock on Defendant's property at 42 Rockspring Lane in Buena Vista, Virginia. On July 13, 2011, I issued an Order and Memorandum Opinion ("Opinion") granting Defendant's motion for summary judgment (docket no. 27, 28). In so doing, I found that a reasonable jury could not conclude from the evidence submitted by the parties that Defendant had either actual or constructive notice of the hammock's unsafe condition. Plaintiff now moves for reconsideration of this judgment.

II. STANDARD OF REVIEW

A court may reconsider a nonfinal judgment. Indeed, Rule 59(e) of the Federal Rules of Civil Procedure provides one mechanism by which a party may move for such reconsideration. While Rule 59(e) does not itself supply a standard for granting a motion to alter or amend a judgment, there are generally three grounds for doing so: “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Pac. Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998). Thus, a motion to reconsider is appropriately raised where, for example, “the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.” *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983). Although district courts enjoy considerable discretion in granting or denying a motion under Rule 59(e), “reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” 11 Wright et al., *Federal Practice and Procedure* § 2810.1 (2d ed. 2011). *See also Above the Belt*, 99 F.R.D. at 101 (“Such problems rarely arise and the motion to reconsider should be equally rare.”).

III. DISCUSSION

In his motion for reconsideration, Plaintiff does not suggest that there has been a change in controlling law or that new evidence has come to light. Rather, Plaintiff argues that the Court should reconsider its Order granting Defendant summary judgment in order to correct a “clear error of law.” Specifically, Plaintiff maintains that I erred by applying the wrong duty of care and accompanying notice standard to Defendant. An innkeeper like Defendant, Plaintiff argues, owes a higher duty of care to its guests than does a mere business invitor and, as such, is required

“to provide a safe premises free from defects, and is charged with conducting a reasonable inspection of the premises.” Pl.’s Br. Supp. Mot. to Reconsider at 1–2.

I acknowledge that innkeepers owe their guests a heightened duty of care exceeding that which business inviters owe their invitees. Innkeepers, like common carriers, have an “elevated duty of ‘utmost care and diligence.’” *Taboada v. Daly Seven, Inc.*, 271 Va. 313, 326, 626 S.E.2d 428, 434 (2006) (quoting *Connell v. Chesapeake and Ohio Ry. Co.*, 93 Va. 44, 55, 24 S.E. 467, 468 (1896)). Notwithstanding this elevated duty of care, however, “neither the innkeeper nor the common carrier is an absolute insurer of the guest’s or the passenger’s personal safety.” *Id.* In other words, an innkeeper is not strictly liable for all unsafe conditions or defects that might arise on the innkeeper’s premises. Rather, as I held in my Opinion granting Defendant summary judgment, an innkeeper “must at least possess constructive knowledge of the unsafe condition in order to be found negligent.” Mem. Op. at 9. I based this conclusion on *Kirby v. Moehlman* in which the Supreme Court of Virginia stated that where an innkeeper “knew or *should have known* of a danger that might have easily been removed,” the innkeeper had a duty to remove the danger. 182 Va. 876, 885, 30 S.E.2d 548, 551 (1944) (emphasis added).

In *Kirby*, the court affirmed the jury’s verdict holding the innkeeper liable for the defective rocking chair that she maintained on her premises and out of which the plaintiff fell. *Id.* at 887, 30 S.E.2d at 552. In that case, the court agreed that whether the unsafe condition was detectable by the innkeeper, and thus whether she breached her heightened duty of care, were appropriately questions for the jury. However, in that case, one of the rockers from the bottom of the chair was completely missing. *Id.* at 879, 30 S.E.2d at 549. Plainly, the chair’s defective condition was more obvious than that of the hammock in the case at hand. In the instant case, no facts were pled indicating that the hammock’s condition was detectable. Mem. Op. at 12. In

fact, in my Opinion granting Defendant summary judgment, I noted Plaintiff's statement that had he examined the hammock closely before sitting in it, he did not think he could have seen that the ropes were defective. *Id.* at 11–12. Moreover, in her deposition, Defendant states that she routinely looked at the hammock while doing yard work and never noticed anything broken. Def.'s Dep. 23:2–7, Feb. 11, 2011. Additionally, she testified in that deposition that although she could not specifically remember the last time she had sat in the hammock, she “liked to sit in it, and . . . would sit in it occasionally.” *Id.* at 23:12–13. Despite the higher duty of care Defendant owed to Plaintiff as a result of their innkeeper-guest relationship, there was no evidence at the summary judgment stage—and none has since been supplied by Plaintiff—demonstrating that the hammock's defective condition would have been visible upon inspection. Therefore, there is no evidence that Defendant should have known of the hammock's defect and consequently, no evidence that Defendant failed to properly exercise her heightened duty of care.

With respect to both case law and evidence, Plaintiff has presented nothing new to suggest that I committed a “clear error of law” when I granted Defendant summary judgment. As such, Plaintiff has not met his burden under Rule 59(e) of the Federal Rules of Civil Procedure. Furthermore, a Rule 59(e) motion for reconsideration is inappropriate when used merely to reiterate previously made arguments. *Above the Belt*, 99 F.R.D. at 101. Plaintiff does precisely such when he again argues that Defendant did not conduct an adequate examination of the hammock prior to Plaintiff's renting of her cabin. Pl.'s Br. Supp. Mot. to Reconsider at 3–5; Pl.'s Reply Br. Supp. Mot. to Reconsider at 2. When I granted Defendant summary judgment, I found that her testimony that she examined the hammock on a regular basis was not controverted by other evidence in the record. Mem. Op. at 12. As the district court in *Above the Belt* stated,

it is improper for a party to use a motion for reconsideration “to ask the Court to rethink what the Court [has] already thought through” 99 F.R.D. at 101.

IV. CONCLUSION

For the reasons stated herein, Plaintiff’s Motion to Reconsider is hereby DENIED. This case shall be stricken from the Court’s active docket.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record.

Entered this _____ day of September, 2011.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE