

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Birts v. Winn

Birts · No. 23-cv-00597-PAB-KAS · Decided April 29, 2026

SUMMARY

The United States District Court for the District of Colorado denied Rita Winn, NP’s motion for reconsideration of the order denying her motion for partial summary judgment. The court held that the newly produced appointment record was not previously unavailable and did not eliminate genuine disputes of material fact concerning deliberate indifference to Kisha Birts’s HIV-related medical needs.

CASE DETAILS

COURT	United States District Court for the District of Colorado
WRITING FOR THE COURT	Philip A. Brimmer
JURISDICTION	United States District Court for the District of Colorado
DECIDED	April 29, 2026
DOCKET	23-cv-00597-PAB-KAS
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved for reconsideration of the court's interlocutory order denying her motion for partial summary judgment on plaintiff's 42 U.S.C. § 1983 deliberate-indifference claim.
STANDARD OF REVIEW	A motion to reconsider an interlocutory order is reviewed under the court's plenary authority to revisit such orders as justice requires, subject to limits generally requiring an intervening change in controlling law, previously unavailable new evidence, or a need to correct clear error or prevent manifest injustice. Reconsideration is not a vehicle for rehashing arguments or presenting arguments and supporting facts that were available earlier.
PRECEDENTIAL VALUE	unpublished district-court order; persuasive authority only
PARTIES	Rita Winn v. Kisha Birts

TOPICS

- motion for reconsideration
- summary judgment
- prisoners rights
- section 1983
- health law

PRACTICE AREAS

civil procedure

civil rights

prisoner medical care

constitutional law

QUESTIONS PRESENTED

1. Whether a document produced after the prior summary-judgment ruling constituted previously unavailable new evidence warranting reconsideration.
2. Whether the appointment document eliminated genuine disputes concerning whether Winn requested or scheduled treatment for Birts's HIV and communicated Birts's HIV-positive status to another provider.
3. Whether Winn demonstrated clear legal or factual error in the prior ruling concerning deliberate indifference, including the gatekeeper duty and Winn's September 2020 chart review.

HOLDINGS

1. The appointment document did not warrant reconsideration because the court had already considered the material facts reflected in that document when deciding the summary-judgment motion.
2. Winn was not entitled to summary judgment because the evidence permitted a reasonable jury to find that she failed to fulfill her gatekeeper duty by not adequately communicating Birts's positive HIV result or ensuring access to a provider capable of treating it.
3. A motion to reconsider is not an appropriate vehicle for presenting authority available during the original summary-judgment briefing, rearguing the application of law to facts, or merely rehashing previously rejected arguments.

KEY QUOTATIONS

“Motions to reconsider are generally an inappropriate vehicle to advance “new arguments, or supporting facts which were available at the time of the original motion.””

“Because the kite, which was not specific regarding HIV, and Offender Appointment sheet failed to inform Ms. Reilly or another provider of Ms. Birts’s positive HIV result and need for further treatment, Ms. Winn is not entitled to summary judgment on the deliberate indifference claim.”

“Therefore, it is ORDERED that Rita Winn, NP’s Motion for Reconsideration of Order Denying Winn’s Motion for Partial Summary Judgment [Docket No. 165] is DENIED.”

FACTUAL BACKGROUND

Birts, who was incarcerated, alleged that Winn was deliberately indifferent to her serious medical needs after Birts tested positive for HIV. Winn submitted a health-services request referring generally to follow-up intake labs and abnormal sexually transmitted infection screening, and an appointment record listed a March 27, 2020 appointment with another provider, but the record did not expressly identify HIV. The other provider did not see Birts in person until March 8, 2021, and the parties disputed whether Winn had adequately referred Birts for HIV treatment or communicated the positive result. The parties also disputed what Winn knew and did after reviewing Birts's chart in September 2020.

PROCEDURAL HISTORY

Birts asserted a deliberate-indifference claim against Winn and a common-law professional-negligence claim. The court previously denied Winn's motion for partial summary judgment, finding genuine disputes concerning whether Winn requested or scheduled treatment for Birts's HIV, communicated Birts's HIV-positive status to another provider, and responded appropriately after learning that Birts had not received treatment. Winn then moved for reconsideration based on a newly produced appointment document and asserted legal and factual error. The court denied reconsideration.

DISPOSITION

other

CASES CITED

- Hatfield v. Board of County Commissioners for Converse County, 52 F.3d 858, 861 (10th Cir. 1995)
- Paramount Pictures Corp. v. Thompson Theatres, Inc., 621 F.2d 1088, 1090 (10th Cir. 1980)
- Houston Fearless Corp. v. Teter, 313 F.2d 91, 92 (10th Cir. 1962)
- Montano v. Chao, No. 07-cv-00735-EWN-KMT, 2008 WL 4427087, at *5-6 (D. Colo. Sept. 28, 2008)
- United Fire & Casualty Co. v. McCreary & Roberts Construction Co., No. 06-cv-00037-WYD-CBS, 2007 WL 1306484, at *1-2 (D. Colo. May 3, 2007)
- Echon v. Sackett, No. 14-cv-03420-PAB-NYW, 2019 WL 8275344, at *2 (D. Colo. Feb. 12, 2019)
- Alpenglow Botanicals, LLC v. United States, 894 F.3d 1187, 1203 (10th Cir. 2018)
- Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000)
- Lucas v. Turn Key Health Clinics, LLC, 58 F.4th 1127, 1137-38 (10th Cir. 2023)
- Davenport v. Pata, 2025 WL 1721149, at *5 & n.6 (10th Cir. June 20, 2025)
- Crowson v. Washington County, 983 F.3d 1166, 1180 & n.8 (10th Cir. 2020)
- Estate of Taylor v. Denver Health and Hospital Authority, No. 23-cv-02355-CNS-KAS, 2025 WL 1952102, at *9 (D. Colo. July 16, 2025)
- Estate of Ronquillo by & through Estate of Sanchez v. City & County of Denver, No. 16-cv-01664-CMA-KMT, 2017 WL 7240908, at *1 (D. Colo. Feb. 14, 2017)
- Jaffrey v. PorterCare Adventist Health System, No. 15-cv-02297-NYW, 2017 WL 3437986, at *2 (D. Colo. Aug. 10, 2017)

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