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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AURA ROSSI,

Plaintiff-Appellant,

v.

CITY OF LAKEWOOD, a
Washington Municipal Corporation;
HEIDI WACHTER, City Attorney;
LAKEWOOD FIRE DEPARTMENT;
and PAUL WEBB, Chief, Lakewood
Fire Department,

Defendants-Appellees.

No. 08-35972

D.C. No. 3:07-cv-5411-RBL

MEMORANDUM *

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted December 8, 2009**
Seattle, Washington

Before: GOULD and TALLMAN, Circuit Judges, and BENITEZ, *** District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

*** The Honorable Roger T. Benitez, United States District Judge for the Southern District of California, sitting by designation.

Aura Rossi appeals from the district court's grant of summary judgment in favor of the City of Lakewood, the Lakewood Fire Department, and Paul Webb, Chief, Lakewood Fire Department, and the district court's denial of Rossi's motion for reconsideration. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Aura Rossi argues that summary judgment was entered against her as an impermissible sanction due to her failure to file opposition briefs. As to the motion brought by the Lakewood Fire Department and its fire chief, during the hearing Rossi's counsel waived any opposition and there were no genuine issues of material fact identified that would preclude summary judgment. The district court correctly granted summary judgment.

As to the motion brought by the City of Lakewood, the district court erred in granting summary judgment as a sanction for Rossi's failure to comply with the local rules of court. "For violation of the local rule the district court will be free to devise such sanctions as seem appropriate short of granting summary judgment where the movant has failed to meet its burden of demonstrating the absence of triable issues." *Martinez v. Stanford*, 323 F.3d 1178, 1182-83 (9th Cir. 2003) (quoting *Marshall v. Gates*, 44 F.3d 722, 725 (9th Cir. 1995)).

Rossi brought the error to the attention of the district court in her motion for reconsideration. A district court's denial of a motion for reconsideration is

reviewed for an abuse of discretion. *Bellus v. United States*, 125 F.3d 821, 822 (9th Cir. 1997) (per curiam). On reconsideration, the district court did consider the underlying undisputed facts. The district court granted summary judgment in favor of the City of Lakewood on the merits of the motion, and not solely as a sanction. In so doing, we cannot say the district court abused its discretion.

Rossi also sought reconsideration of the summary judgment entered for the fire department defendants and an earlier judgment in favor of City of Lakewood City Attorney, Heidi Wachter, entered on the basis of prosecutorial immunity. The district court found no reason to change the earlier rulings and we find no abuse of discretion.

AFFIRMED.