

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
*Philadelphia Division*

**QUINTON BURNS, et al.**

*Plaintiffs,*

**vs.**

**SEAWORLD PARKS &  
ENTERTAINMENT, INC., et al.,**

*Defendants.*

**Case No. 2:22-cv-02941**

**PLAINTIFFS' MOTION FOR RECONSIDERATION  
OF THE APRIL 17, 2024, ORDER GRANTING SUMMARY JUDGMENT  
AGAINST PLAINTIFFS ASHLEY VALETTE AND D.V.**

Plaintiffs, by and through their undersigned attorneys, and pursuant to Local Rule of Civil Procedure 7.1(g), respectfully move this Court to reconsider its Order, dated April 17, 2024 (ECF 140) (hereinafter “the Order”), which granted Defendants SeaWorld Parks & Entertainment, Inc.’s and SeaWorld Parks & Entertainment LLC’s (collectively, “Defendants” or “SeaWorld”) Motion for Summary Judgment against Plaintiffs Ashley Valette and D.V. (“the Valette Family”), and, in support thereof, state as follows:

**INTRODUCTION**

This Court recently granted, in part, the motion for summary judgment filed by Defendants. The Court granted summary judgment as to all claims held by Plaintiffs Ashley Valette and D.V. (“the Valette Family”). The Court based its ruling on clear factual errors contended by Defendants. Mainly, the Court credited SeaWorld’s employee’s testimony that interacting with similarly situated white children instead of with D.V. was done as a safety measure from the children having stepped across a yellow safety line into the street. In doing so, the Court overlooked the video submitted by Plaintiffs as an attachment to their First Amended Complaint ¶ 98 n. 11 (ECF 25),

demonstrating (1) the costume character encouraged the two white children to come into the street for a hug, (2) the costume character did not usher either child back further onto the side, and (3) there was no yellow safety line.<sup>1</sup> A finding to the contrary is a clear error of fact, and the Order must be reconsidered to avoid a manifest injustice.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On or about June 20, 2022, the Valette Family visited Sesame Place and attended the parade. At the parade, Defendants' costume character performer dressed as "Grover" intentionally discriminated against the Valette Family by refusing to interact with D.V., despite interacting with many nearby White families. Based on this incident, as well as the incidents of seven other families, Plaintiffs filed the instant action against SeaWorld. *See* Am. Compl. (ECF 25).

Pursuant to a Joint Stipulation and Order for an Extension of Time (ECF 93), on December 18, 2023, Defendants filed a Motion for Summary Judgement and Statement of Undisputed Facts (ECF 108-1 and 108-2, respectively). In its Statement, Defendants asserted,

a Sesame Place Entertainment Department employee, performed the costumed character Grover in the Valette Plaintiffs' video in footnote 11 of the FAC. [The employee] testified that she did not refuse to interact with D.V. because of her race, nor did she choose to interact with the other two children in the video because of their race (which appears to be Caucasian), but rather for safety: she first interacted with the other two children because they stepped out into the street, and she hugged them to gently push them back for their safety, and then she did not interact with D.V. because she had to keep moving to follow the safety rule that characters must stay in front of the approaching float.

ECF 108-2 ¶¶ 65-66.

On January 8, 2024, Plaintiffs filed their Opposition to Defendants' Motion for Summary Judgment and Statement of Undisputed Facts (ECF 116 and ECF 116-2, respectively). Plaintiffs

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<sup>1</sup> For convenience, the video from Plaintiffs' Amended Complaint can be found here: <https://www.youtube.com/shorts/uhPP-Uk4dsA> ("the Valette Video").

Opposition contested Defendants’ position by asserting that the Valette Family’s video clearly shows the discriminatory actions of the costume character and D.V.’s visible disappointment. Pls.’ Opp. 21-22.

On April 17, 2024, the Court granted summary judgment against the Valette Family, dismissing all their claims. In its Opinion, the Court relied on the facts asserted by Defendants that the costume character

only chose to hug the White children in the video of this incident because they had stepped into the street beyond the yellow safety line. A hug allowed her to usher the children to a safe position. Once she had done so, she did not have time to interact with any other guests because, in a miniparade, the costumed characters “have to keep moving.”

*Burns v. SeaWorld Parks & Ent., Inc.*, No. CV 22-2941, 2024 WL 1660514, at \*1, \*5 (E.D. Pa. Apr. 17, 2024) (ECF 140). Moreover, the Court found that Plaintiffs’ argument and, thus, Plaintiffs’ reliance on the Valette Video—was indiscernible from arguments raised related to other families in demonstrating disputes of material facts. With this finding, the Court determined that Plaintiffs did not satisfy prong three of the *McDonnell Douglas Corp. v. Green* framework (“*McDonnell Douglas Framework*”), which requires Plaintiffs to show that Defendants’ proffered legitimate nondiscriminatory excuse is pretextual, 411 U.S. 792, 804-807 (1973).

A review of the Valette Video, however, establishes a direct, obvious, and clear error of facts in three major ways: (1) the costume character encouraged the two white children to come into the street for a hug, (2) the costume character did not usher either child back further onto the side, and (3) there was no yellow safety line.

### LEGAL STANDARD

Motions for reconsideration are governed by Eastern District of Pennsylvania Local Rule 7.1(g), which permits a party to move for reconsideration “within fourteen (14) days after the entry

of the order concerned[.]” Motions for reconsideration are designed “to correct manifest errors of law or fact . . . .” *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985) To grant reconsideration, the movant must “show at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” *Max’s Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). Though reconsideration “should be granted sparingly,” *Douris v. Schweiker*, 229 F.Supp.2d 391, 408 (E.D. Pa. 2002) (internal quotation marks omitted), this Court ““has the discretion to reconsider an issue and should exercise that discretion whenever it appears that a previous ruling, even if unambiguous, might lead to an unjust result.”” *In re Anthanassious*, 418 F. App’x 91 (3d Cir. 2011) (quoting *Swietlowich v. Bucks Cnty.*, 610 F.2d 1157, 1164 (3d Cir. 1979)).

### ARGUMENT

In their Motion for Summary Judgment, Defendants contend there was no racial discrimination against the Valette family because the individual, who wore the Grover character costume testified, that she did not discriminate based on race and because her interaction with white children and not Ms. Valette’s child was so that she could usher the white children back behind the yellow safety line. *See* ECF 108-2 ¶¶ 65-66. The Court granted Defendants’ Motion based on a clear error of fact, as established by the Valette Video, and should grant Plaintiffs’ instant motion to prevent manifest injustice.

Manifest injustice is ““an error in the trial court that is direct, obvious, and observable[.]”” *Teri Woods Pub., L.L.C. v. Williams*, No. CIV.A. 12-04854, 2013 WL 6388560, at \*1, \*2 (E.D. Pa. Dec. 6, 2013) (quoting *In re Titus*, 479 B.R. 362, 367–68 (Bankr. W.D. Pa.2012)). Reconsideration should be granted ““based on manifest injustice if the error is apparent to the point

of being indisputable. In order for a court to reconsider a decision due to manifest injustice, the record presented must be so patently unfair and tainted that the error is manifestly clear to all who view it.” *Id.*

In the Valette Video, D.V. is seen excitedly waving at the approaching costume character (“Grover”). At the very beginning of the video, D.V. is standing slightly behind two white children. As one of the white children move forward (“Child 1”), D.V. steps up and aligns herself parallel to the other white child (“Child 2”). Child 1 stops moving forward as Grover drew near. Once directly in front of Child 1—with more than a foot between them and no yellow safety line—Grover stops, bends over, and opens his arm to offer Child 1 a hug. At Grover’s invitation to move forward even further, Child 1 takes several steps up to be able to hug Grover. During this interaction, D.V. remains waving next to Child 2. After the hug between Grover and Child 1, Grover repeats these acts for Child 2. Though Child 2 took fewer steps than Child 1 to hug Grover, Grover still stopped to encourage Child 2 to step up for a hug. Grover intentionally discriminated against D.V., who was less than a foot from the interactions with the two white children and making herself plainly, observably visible.

The Valette Video, which was discernible in Plaintiffs’ Opposition, established facts that satisfied prong three of the *McDonnell Douglas* framework. The Valette Video could lead a reasonable trier of fact to find in favor of Plaintiffs because the Video casts doubt on SeaWorld’s proffered nondiscriminatory explanation for Grover’s conduct. The Court’s finding of the contrary created an error of fact that is direct and obvious. Accordingly, the Court should grant Plaintiffs’ Motion for Reconsideration.

## CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reconsider its ruling and revise its April 17, 2024, Order to DENY Defendants' Motion for Summary Judgment against the Valette Family.

Respectfully submitted,

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**REQUEST FOR A HEARING**

Plaintiffs respectfully request a hearing on this matter.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, on this 1st day of May 2024, that a true and correct copy of the foregoing Plaintiffs' Motion for Reconsideration of the April 17, 2024, Order Granting Summary Judgment against Plaintiffs Ashley Valette and D.V. was served using the Court's CM/ECF system, which will send notification of such filing to counsel and parties of record electronically.

/s/ Malcolm P. Ruff

Malcolm P. Ruff



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**ORDER**

Upon consideration of Plaintiffs' Motion for Reconsideration of the April 17, 2024, Order Granting Summary Judgment against Plaintiffs Ashley Valette and D.V., any opposition thereto, and any hearing thereon, it is this \_\_\_\_ day of \_\_\_\_\_ 2024 hereby

**ORDERED**, that Plaintiffs' Motion for Reconsideration of the April 17, 2024, Order Granting Summary Judgment against Plaintiffs Ashley Valette and D.V. is **GRANTED**; and it is further

**ORDERED**, that the April 17, 2024, Order is hereby **VACATED**, insofar as it relates to the claims of Plaintiffs Ashley Valette and D.V., and it is further

**ORDERED**, that Defendants' Motion for Summary Judgment against Plaintiffs Ashley Valette and D.V. is **DENIED**.

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The Honorable Wendy Beetlestone