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Affidavit of Celine Marquez
5487 S. Everett Way, Littleton, CO 80123
December 11, 2001

In April 1999 my official title was pre-school administrator for Jefferson County Schools. On April 22, 1999 it was my task to visit the pre-schools in the area to make sure that security checks had been done, and to see if there were any problems that needed to be communicated. My third pre-school to visit that day was Westridge Elementary. I was there talking to the director, Cheryl Atzmiller, sometime mid-day and we were in the pre-school office. Mr. and Mrs. O'Shea came in and they had an arrangement of flowers for Cheryl Atzmiller and they came to give her these flowers to thank her for keeping their daughter at the pre-school late on April 20th. Their daughter attended the morning session and usually gets out around 11:30 but no-one was there to pick her up.

Mr. O'Shea started telling me this story. Mr. O'Shea identified himself as a Denver SWAT Officer and stated that he was on his way to pick up his child from pre-school on April 20th. What stays in my mind is that he was very upset and emotional. He started telling his events of the day at Columbine and said that he got a call from his captain, Vince DiManna. Once at Columbine he met with DiManna and went to his trunk and got a weapon, but it was not the type of weapon typically used by SWAT officers and he didn't have the proper protective clothing. He also said that he went in just in his tee shirt. I stopped him to thank him and shook his hand and told him I had two children attending Columbine and he broke down and began to cry.

He described going in behind the fire truck that DiManna commandeered and once in the school he said he thinks he may have had a clear shot at one of the perpetrators but he didn't recall taking the shot because he was going through in his mind thinking what other SWAT teams wear to be certain he was not mistaking another SWAT member for a perpetrator. Through his description I had the impression that he was looking at the perpetrator through a doorway or through a window of a door, maybe through a hallway. Also he said he hadn't slept since April 20th because he said that he thought he may have shot an innocent student. He had been in law enforcement for 13 years and had never fired his weapon at another human being in that time. He was very emotional and spoke again about the possibility of friendly fire. Officer O'Shea said he was relieved because he had been to a debriefing earlier that morning and had been assured that ballistics had come back and that none of the kids had been hit by police bullets.

Celine Marquez 12/11/01
Celine Marquez

State of Colorado)
County of Jefferson) ss.

The foregoing instrument was acknowledged before me this 11th day of December, 2001 by Celine Marquez.

Witness my hand and official seal.
My Commission Expires Oct 28, 2004

Randall B. Brown
Notary Public 9200 W. Cross St #110
Littleton Co. 80123

Ex "A"

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE**

Civil Case No. 00-B-790

MARK A. SCHNURR and SHARILYN K. SCHNURR, individually and as parents of Valeen M. Schnurr, Ashley L. Schnurr and Samantha G. Schnurr, and VALEEN M. SCHNURR, Individually,

<p style="text-align: center;">FILED UNITED STATES DISTRICT COURT DENVER, COLORADO JAN 23, 2002 JAMES R. MANSPEAKER, CLERK</p>
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DALE C. TODD and JANA M. TODD, individually and as parents of Evan M. Todd, Brian W. Todd, Adam C. Todd, and Carl J. Todd, and EVAN M. TODD, BRIAN W. TODD and ADAM C. TODD, Individually,

ANDREW M. PARK and MICHELLE H. PARK, individually and as parents of Jeanna A. Park and Kathy H. Park, and JEANNA A. PARK, Individually,

Plaintiffs,

v.

THE BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, THE SHERIFF'S DEPARTMENT OF JEFFERSON COUNTY, SHERIFF JOHN STONE, DEPUTY SHERIFF NEIL GARDNER, DEPUTY SHERIFF PAUL MAGOR, DEPUTY SHERIFF PAUL SMOKER, DEPUTY SHERIFF SCOTT TABORSKY, DEPUTY SHERIFF RICK SEARLE, DEPUTY SHERIFF KEVIN WALKER and UNDERSHERIFFS, DEPUTY SHERIFFS AND OTHER EMPLOYEES OF THE SHERIFF'S DEPARTMENT OF JEFFERSON COUNTY JOHN DOES 1 THROUGH 30,

Defendants.

ORDER

On December 11, 2001, plaintiffs filed their "Plaintiffs The Schnurr, Todd And Park Families' Motion Requesting That This Court Amend Its November 27, 2001 Consolidated Order Pursuant To Fed. R. Civ. P. 54(b) And 28 U.S.C. § 1292(b) To Exclude The Case To Which These Plaintiffs Are Parties From Certification." The sheriff defendants have responded to the motion and plaintiffs have filed their reply. Being sufficiently informed,

IT IS ORDERED that the motion is DENIED.

BY THE COURT:

Lewis T. Babcock, Chief Judge

DATED: January 23, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE

Civil Case No. 00-B-806

GREGORY A. RUEGSEGGER and
DARCEY L. RUEGSEGGER, individually
and as parents of Kacey L. Ruegsegger,
Britney L. Ruegsegger, Brett A. Ruegsegger,
and Brian T. Ray, KACEY L.
RUEGSEGGER, Individually, and BRIAN T. RAY, Individually,

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
JAN 23, 2002
JAMES R. MANSPEAKER,
CLERK

Plaintiffs,

v.

THE JEFFERSON COUNTY BOARD OF COUNTY COMMISSIONERS, THE JEFFERSON
COUNTY SHERIFF'S DEPARTMENT, SHERIFF JOHN C. STONE, Individually and in his
Official Capacity, FORMER SHERIFF RONALD BECKHAM, Individually and in his Official
Capacity, DEPUTY SHERIFF NEIL GARDNER, Individually, DEPUTY SHERIFF PAUL
MAGOR, Individually, DEPUTY SHERIFF PAUL SMOKER, Individually, DEPUTY
SHERIFF SCOTT TABORSKY, Individually, DEPUTY SHERIFF RICK SEARLE,
Individually, DEPUTY SHERIFF KEVIN WALKER, Individually, JOHN HICKS, Individually,
MARK M. MILLER, Individually, T. WILLIAMS, Individually, MIKE GUERRA, Individually,
PHILIP LEBEDA, Individually, and JOHN DOES (1 through 10), and JANE DOES (1
through 10),

Defendants.

ORDER

On December 20, 2001, plaintiffs filed their "Motion For Reconsideration Pursuant
To F.R.C.P. 59(e), For Relief From Judgment And Leave To Amend Pursuant to F.R.C.P.
60(b) And 15(a), For Extension Of Time In Which To File Amended Pleadings, And For An
Order preserving Evidence." The motion is identical to that filed in the companion case of
Castaldo, et al v. Jefferson County Sheriff John C. Stone, et al., Civil Case No. 00-B-1611.
The sheriff defendants have responded to the motion. For the reasons stated in Civil Case
No. 00-B-1611, the motion will be denied.

IT IS ORDERED that the motion is DENIED.

BY THE COURT:

Dated: January 23, 2002

Lewis T. Babcock, Chief Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE**

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
JAN 23, 2002
JAMES R. MANSPEAKER,
CLERK

Civil Case No. 00-B-808

BRIAN E. ROHRBOUGH, SUSAN A. PETRONE, individually and as personal representative of the estate of Daniel Rohrbough, deceased, DONALD F. FLEMING, individually and as personal representative of the estate of Kelly Fleming, deceased, DIEDRA A. FLEMING, ERIN FLEMING, JOSEPH R. KECHTER, individually and as personal representative of the estate of Matthew Joseph Kechter, deceased, ANN MARIE KECHTER, ADAM D. KECHTER, a minor child, by and through his parents and next friends, Joseph R. Kechter and Ann Marie Kechter, DAWN L. ANNA, individually and as personal representative of the estate of Lauren D. Townsend, deceased, MATTHEW TOWNSEND, KRISTIN TOWNSEND, JOSHUA TOWNSEND, ALBERT B. VELASQUEZ, individually and as personal representative of the estate of Kyle A. Velasquez, deceased PHYLLIS E. VELASQUEZ, and BRADLEY S. BERNALL and MISTY R. BERNALL, individually, and as Co-personal representatives of the estate of Cassie R. Bernall, deceased,

Plaintiffs,

v.

JOHN P. STONE, the Sheriff of Jefferson County, Colorado, individually and in his Official Capacity, JEFFERSON COUNTY SHERIFF'S DEPARTMENT a/k/a JEFFERSON COUNTY SHERIFF'S OFFICE, JOHN DUNAWAY, individually, TERRY MANWARING, individually, DAVID WALCHER, individually, PHILIP HY, individually, JOHN KIEKBUSCH, individually, NEIL GARDNER, individually, PAUL MAGOR, individually, PAUL SMOKER, individually, SCOTT TABORSKY, individually, RICK SEARLE, individually, KEVIN WALKER, individually, JOHN DOES NUMBERS 1-100, individually, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON, COLORADO, THOMAS E. KLEBOLD, SUSAN KLEBOLD, and RONALD FRANK HARTMANN,

Defendants.

ORDER

On December 26, 2001, plaintiffs, with the exception of Bradley S. Bernall and Misty R. Bernall, filed their "Motion For Reconsideration Under Fed. R.Civ. P. 59(e) Or, In The Alternative, For Relief From Judgment Under Fed. R. Civ. P. 60(B); And Motion To Amend Complaint" (the motion). The sheriff defendants have responded to the motion. I construe

the motion for reconsideration as one for new trial pursuant to Fed. R. Civ. P. 59(e).

Plaintiffs first proffer "New Evidence Regarding the Shooting Death of Daniel Rohrbough." They now proffer the specific identity of a Denver City and County Police Officer. For purposes of this motion only, I accept as true the proffered identity of the Denver Police Officer alleged to have fatally wounded Brian Rohrbough. Plaintiffs next assert "New Evidence Regarding Law Enforcement Pattern of Falsification and Deceit." Based upon this new evidence, the plaintiffs contend the judgment entered upon my December 12, 2001, Amended Memorandum Opinion and Order (the Order) should be vacated and plaintiffs should be allowed to amend their complaint.

The Order addressed the Rohrbough claim one for wrongful death occasioned by wilful and wanton misconduct as distinct from that of the other plaintiffs. This is because the identity of the law enforcement officer who was alleged to have fatally shot Daniel Rohrbough could not be stated other than as a John Doe. Paragraph 27 of the Second Amended Complaint alleged that: "Defendants John Does Numbers 1-100 were at all pertinent times herein law enforcement officers, employees, and agents of or aiding Defendant Stone and/or the Sheriff's Department in some manner with the Sheriff's Department's response to the shooting at Columbine High School on April 20, 1999." (Emphasis Added.) The sheriff defendants contend that the proffered identity of the Denver Police Officer alleged to have fatally shot Daniel Rohrbough manifests the Order's correct result as to the sheriff defendants. The sheriff defendants read Paragraph 27 of the Second Amended Complaint too narrowly. As a law enforcement officer acting as an agent of or aiding the sheriff defendants, these defendants would not necessarily be relieved from liability for this narrow reason alone.

However, the controlling law of duty and Immunity set forth in the companion case of *Schnurr, et al. v. The Board of County Commissioners of Jefferson County, et al.*, Civil Case No. 00-B-790, was incorporated into the Order. That law was also set forth at length in the companion case of *Castaldo, et al. v. Jefferson County Sheriff John C. Stone, et al.*, Civil Case No. 00-B-1611. Application of this law to this "newly discovered evidence" has no probability of changing the result and, thus, is immaterial within the meaning of Rule 59(e). Additionally, this "new evidence" has no bearing upon the other plaintiffs' motion. Any amendment would be futile.

Plaintiffs also proffer new evidence regarding a law enforcement pattern of falsification and deceit. Read in a Rule 59(e) context, Paragraphs 21(1-3), (9), (14-15) and (18-23) relate to the allegation that Daniel Rohrbough was fatally shot by the identified Denver Police Officer. As I stated, assuming the truth of that allegation, the outcome remains unchanged.

Paragraphs 21 (4-8), (25-26), and (29) of plaintiffs' motion relate to allegations that the sheriff defendants were aware or should have been aware of the risk that Harris and Klebold would attack Columbine High School and, thus, the sheriff defendants should have acted to prevent the attack. First, these allegations repeat the substance of Paragraphs 41 through 51 of plaintiffs' Second Amended Complaint. As noted at page 8 of the Amended Order, plaintiffs explicitly disclaimed any claim based upon the sheriff defendants pre-attack conduct. Despite ample opportunity to assert such claims as were asserted by numerous other plaintiffs in related cases, the plaintiffs here elected not to do so.

The balance of the allegations in Paragraphs 21 (10-13), (16-17), (24), and (27-28) relate to post attack alleged misconduct and have no bearing upon the Amended Order's

Rule 12(b)(6) analysis.

I conclude that any evidence proffered here as newly discovered has no probability of changing the Amended Order's result and is not material within the meaning of Rule 59(e). I further conclude that plaintiffs have failed to meet their burden to show that relief is warranted to correct manifest error of law or fact or to prevent manifest injustice. Any amendment would be futile.

Out of an abundance of caution, I also construe the motion as one for relief from final judgment for fraud, misrepresentation or other misconduct of an adverse party under Fed. R. Civ. P. 60(b)(3). The plaintiffs' burden to prove fraud, misrepresentation or misconduct is by clear and convincing evidence. Further plaintiffs must show denial of opportunity to be fully and fairly hearing. Plaintiffs fail to meet their burden pursuant to Rule 60(b)(3).

IT IS THEREFORE ORDERED that the plaintiffs' motion is DENIED.

BY THE COURT:

Lewis T. Babcock, Chief Judge

Dated: January 23, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE**

Civil Case No. 00-B-1611

RICHARD R. CASTALDO, DOMINIC R.
CASTALDO and CONNIE MICHALIK,

Plaintiffs,

v.

JEFFERSON COUNTY SHERIFF JOHN C. STONE, individually and in his official capacity, FORMER JEFFERSON COUNTY SHERIFF RONALD BECKHAM, individually and in his official capacity, JEFFERSON COUNTY SHERIFF'S DEPARTMENT, NEIL GARDNER, individually, JOHN HICKS, individually, MARK M. MILLER, individually, TANYA WILLIAMS, individually, MIKE GUERRA, individually, PHILLIP LEBEDA, individually, JOHN or JANE DOES 2 THROUGH 10 (ALL DEPUTIES IN THE JEFFERSON COUNTY SHERIFF'S DEPARTMENT), individually, JEFFERSON COUNTY SCHOOL DISTRICT R-1, FRANK DeANGELIS, individually and in his official capacity, HOWARD CORNELL, individually and in his official capacity, PETER HORVATH, individually, WILLIAM BUTTS, individually, GARRETT TALOCCO, individually, JUDY KELLY, individually, TOM TONELLI, individually, TOM JOHNSON, individually, JOHN OR JANE DOES 11 THROUGH 30, individually, PHILLIP DURAN, JAMES ROYCE WASHINGTON, RONALD FRANK HARTMANN, J.D. TANNER, dba TANNER GUN SHOW, ROBERT KIRGIS, and KIRGIS, INC., a Colorado Corporation,

Defendants.

ORDER

On December 20, 2001, plaintiffs filed their "Motion For Reconsideration Pursuant To F.R.C.P. 59(e), For Relief From Judgment And Leave To Amend Pursuant to F.R.C.P. 60(b) And 15(a), For Extension Of Time In Which To File Amended Pleadings, And For Order Preserving Evidence", (the motion). The motion is directed to my November 27, 2001 Memorandum Opinion And Order (the Order). The sheriff defendants and the school defendants have responded to the motion.

Plaintiffs first ask for clarification that information before the Court in the attachments

to plaintiffs' supplemental citation is properly before the Court and incorporated into the allegations of the Third Amended Complaint. In the alternative, plaintiffs seek leave to amend, within reasonable time, to include allegations based on those attachments. The attachments are certainly a part of the record in this case. The most significant attachment is the draft affidavit for search warrant. It adds nothing to the Third Amended Complaint's allegations which were taken as true. Most importantly, even if incorporated into a complaint it would not alter application of the controlling law of duty, causation, and immunity in such a way as to alter the result.

Plaintiffs also assert misapplication of the no-heightened pleading rule of *Currier v. Doran*, 242 F.3d 905 (10th Cir. 2001). First, the rule of that case does not apply to the state based claims. Secondly, I applied the Fed. R. Civ. P. 12(b)(6) analysis against plaintiffs' allegations as plaintiffs elected to plead them.

The primary thrust of plaintiffs' motion for reconsideration, which I take as a motion for new trial pursuant to Fed. R. Civ. P. 59(e), is their contention that "newly discovered evidence" of the Harris journal warrants setting aside the Order granting discovery and further amendment of the complaint. I will assume this information constitutes newly discovered evidence which could not have been obtained through the exercise of diligence. Even so, under the Order's legal matrix and having accepted as true the allegations of plaintiffs' Third Amended Complaint, this information is cumulative, not material, and has no probable capacity to change the Order's result. Any amendment, therefore, would be futile.

The controlling law of duty, causation, and immunity remains unchanged. Plaintiffs have failed to meet their burden to show manifest error of law or fact, such newly discovered evidence justifying the relief sought, any misconduct of opposing counsel, or

that manifest injustice would obtain if the motion is denied.

As to plaintiffs' request that all parties be ordered to preserve and secure any and all physical evidence and documents or things pertaining to the Columbine tragedy, including electronic records, computer files, audio and video tapes, films, photographs, memoranda and notes, the sheriff defendants do not oppose it in principle, but request that it be specific as to duration and scope. Any such order must indeed be specific as to its duration and scope. However, the motion is so broad that I cannot begin to define a reasonable scope or duration of such an order.

IT IS THEREFORE ORDERED that the plaintiffs' motion is DENIED.

BY THE COURT:

Lewis T. Babcock, Chief Judge

Dated: January 23, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE**

Civil Case No. 00-B-1612

SEAN GRAVES, a minor, by his parents,
RANDAL GRAVES and NATALIE GRAVES,

Plaintiffs,

v.

JEFFERSON COUNTY SHERIFF JOHN C. STONE, individually and in his official capacity, FORMER JEFFERSON COUNTY SHERIFF RONALD BECKHAM, individually and in his official capacity, JEFFERSON COUNTY SHERIFF'S DEPARTMENT, NEIL GARDNER, individually, JOHN HICKS, individually, MARK M. MILLER, individually, T. WILLIAMS, individually, MIKE GUERRA, individually, PHILLIP LEBEDA, individually, JOHN or JANE DOES 2 THROUGH 10, (ALL DEPUTIES IN THE JEFFERSON COUNTY SHERIFF'S DEPARTMENT), individually, JEFFERSON COUNTY SCHOOL DISTRICT R-1, FRANK DeANGELIS, individually and in his official capacity, HOWARD CORNELL, individually and in his official capacity, PETER HORVATH, individually, WILLIAM BUTTS, individually, GARRETT TALOCCO, individually, JUDY KELLY, individually, TOM TONELLI, individually, TOM JOHNSON, individually, JOHN OR JANE DOES 11 THROUGH 30, individually, JAMES ROYCE WASHINGTON, RONALD FRANK HARTMANN, J.D. TANNER, dba TANNER GUN SHOW, ROBERT KIRGIS, and KIRGIS, INC., a Colorado corporation,

Defendants.

ORDER

On December 21, 2001, plaintiffs filed their "Motion For Relief From Judgment Under Rule 60(b)(2)(3)(6), F.R.C.P." The sheriff defendants and school defendants have responded to the motion.

Plaintiffs' motion proffers as newly discovered evidence a journal by Eric Harris and reports by the Brown family.

"Rule 60(b) relief is only appropriate under extraordinary circumstances."

Massengale v. Oklahoma Bd. Of Medical Examiners in Optometry, 30 F.3d 1325, 1330 (10th Cir. 1994). I analyze a Rule 60(b)(2) motion based upon the ground of newly discovered

evidence according to the same standard as that applied under Rule 59. My November 27, 2001 Order of Dismissal in this case incorporated the legal analysis and conclusions set forth in the companion case of *Castaldo, et al. v. Jefferson County Sheriff John C. Stone, et al.*, Civil Case No. 00-B-1611. The controlling law of duty, causation, and Immunity set forth in *Castaldo*, as applied to this case, remains unchanged. First, I will assume that the Harris Journal is newly discovered and could not have been discovered through the exercise of diligence. That assumption appears unwarranted, however, as to the Brown reports. I next conclude that under *Castaldo's* legal matrix, such evidence is cumulative, immaterial, and has no probability of changing the result.

To obtain relief pursuant to Fed. R. Civ. P. 60(b)(3) for fraud, misrepresentation or other misconduct of an adverse party, the movant must establish such conduct by clear and convincing evidence. Additionally, the fraud must have prevented the moving party from fully and fairly being heard. Plaintiffs have failed to meet their Rule 60(b)(3) burden.

Finally, plaintiffs have failed to show such extraordinary circumstances as would justify relief pursuant to Fed. R. Civ. P. 60(b)(6).

IT IS THEREFORE ORDERED that the motion is DENIED.

BY THE COURT:

Lewis T. Babcock, Chief Judge

Dated: January 23, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE**

Civil Case No. 00-B-1613

MIKE KIRKLIN and LANCE KIRKLIN,

Plaintiffs,

v.

<p style="text-align: center;">FILED UNITED STATES DISTRICT COURT DENVER, COLORADO JAN 23, 2002 JAMES R. MANSPEAKER, CLERK</p>
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JEFFERSON COUNTY SHERIFF JOHN C. STONE, individually and in his official capacity, FORMER JEFFERSON COUNTY SHERIFF RONALD BECKHAM, individually and in his official capacity, JEFFERSON COUNTY SHERIFF'S DEPARTMENT, NEIL GARDNER, individually, JOHN HICKS, individually, MARK M. MILLER, individually, T. WILLIAMS, individually, MIKE GUERRA, individually, PHILLIP LEBEDA, individually, JOHN or JANE DOES 2 THROUGH 10, (ALL DEPUTIES IN THE JEFFERSON COUNTY SHERIFF'S DEPARTMENT), individually, JEFFERSON COUNTY SCHOOL DISTRICT R-1; FRANK DeANGELIS, individually and in his official capacity, HOWARD CORNELL, individually and in his official capacity, PETER HORVATH, individually, WILLIAM BUTTS, individually, GARRETT TALOCCO, individually, JUDY KELLY, individually, TOM TONELLI, individually, TOM JOHNSON, individually, JOHN OR JANE DOES 11 THROUGH 30, individually, JAMES ROYCE WASHINGTON, RONALD FRANK HARTMANN, J.D. TANNER, dba TANNER GUN SHOW, ROBERT KIRGIS, and KIRGIS, INC., a Colorado corporation,

Defendants.

ORDER

On December 21, 2001, plaintiffs filed their "Motion For Relief From Judgment Under Rule 60(b)(2)(3)(6), F.R.C.P." The sheriff defendants and school defendants have responded to the motion.

Plaintiffs' motion proffers as newly discovered evidence a journal by Eric Harris and reports by the Brown family.

"Rule 60(b) relief is only appropriate under extraordinary circumstances."

Massengale v. Oklahoma Bd. Of Medical Examiners in Optometry, 30 F.3d 1325, 1330 (10th Cir. 1994). I analyze a Rule 60(b)(2) motion based upon the ground of newly discovered

evidence according to the same standard as that applied under Rule 59. My November 27, 2001 Order of Dismissal in this case incorporated the legal analysis and conclusions set forth in the companion case of *Castaldo, et al. v. Jefferson County Sheriff John C. Stone, et al.*, Civil Case No. 00-B-1611. The controlling law of duty, causation, and Immunity set forth in *Castaldo*, as applied to this case, remains unchanged. First, I will assume that the Harris journal here is newly discovered and could not have been discovered through the exercise of diligence. That assumption appears unwarranted, however, as to the Brown reports. I next conclude that under *Castaldo's* legal matrix, such evidence is cumulative, immaterial, and has no probability of changing the result.

To obtain relief pursuant to Fed. R. Civ. P. 60(b)(3) for fraud, misrepresentation or other misconduct of an adverse party, the movant must establish such conduct by clear and convincing evidence. Additionally, the fraud must have prevented the moving party from fully and fairly being heard. Plaintiffs have failed to meet their Rule 60(b)(3) burden.

Finally, plaintiffs have failed to show such extraordinary circumstances as would justify relief pursuant to Fed. R. Civ. P. 60(b)(6).

IT IS THEREFORE ORDERED that the motion is DENIED.

BY THE COURT:

Lewis T. Babcock, Chief Judge

Dated: January 23, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE

Civil Case No. 00-B-1614 (Consolidated with
01-B-718 and 01-B-969)

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
JAN 23, 2002
JAMES R. MANSPEAKER,
CLERK

MICHAEL SHOELS AND VONDA SHOELS,
as Parents of Decedent ISAIAH SHOELS,

Plaintiffs,

v.

JEFFERSON COUNTY SHERIFF JOHN C. STONE, Individually and In his official capacity,
FORMER JEFFERSON COUNTY SHERIFF RONALD BECKHAM, Individually and In his
official capacity, JEFFERSON COUNTY SHERIFF'S DEPARTMENT, NEIL GARDNER,
Individually, JOHN HICKS, Individually, MARK M. MILLER, Individually, T. WILLIAMS,
Individually, MIKE GUERRA, individually, PHILLIP LEBEDA, Individually, JOHN or JANE
DOES 2 THROUGH 10, (ALL DEPUTIES IN THE JEFFERSON COUNTY SHERIFF'S
DEPARTMENT), Individually, JEFFERSON COUNTY SCHOOL DISTRICT R-1, FRANK
DeANGELIS, Individually and In his official capacity, HOWARD CORNELL, Individually and
in his official capacity, PETER HORVATH, individually, WILLIAM BUTTS, Individually,
GARRETT TALOCCO, individually, JUDY KELLY, Individually, TOM TONELLI, individually,
TOM JOHNSON, Individually, JOHN OR JANE DOES 11 THROUGH 30, Individually,
THOMAS KLEBOLD, SUSAN KLEBOLD, WAYNE HARRIS, KATHERINE HARRIS,
JAMES ROYCE WASHINGTON, RONALD F. HARTMANN, and J. D. TANNER d/b/a
TANNER GUN SHOW,

Defendants.

ORDER

On December 10, 2001, plaintiffs filed their "Motion To Amend Findings, Make
Additional Findings Pursuant To Fed. R. Civ. P. 52(b), Motion For Reconsideration and
Relief From Order/Judgment Due To Newly Discovered Evidence Pursuant To Fed. R. Civ.
P. 60(b), Motion To Amend The Pleadings, and Request For Extension Of Time", (the
motion). The sheriff defendants and school defendants have responded to the motion. On
December 31, 2001, plaintiffs filed a supplemental motion adopting and incorporating the

arguments of plaintiffs in the companion case of *Castaldo, et al. v. Jefferson County Sheriff John C. Stone, et al.*, Civil Case No. 00-B-1611.

Plaintiffs' reliance on Fed. R. Civ. P. 52(b) is misplaced. That rule pertains to actions tried upon the facts without a jury or with an advisory jury. No such trial occurred in this case because the November 27, 2001 order of dismissal was pursuant to Fed. R. Civ. P. 12(b)(6).

I construe plaintiffs' motion as one for new trial pursuant to Fed. R. Civ. P. 59(e) and 60(b). The motion will be denied for the reasons stated in Civil Case No. 00-B-1611.

IT IS THEREFORE ORDERED that the motion is DENIED.

BY THE COURT:

Lewis T. Babcock, Chief Judge

Dated: January 23, 2002

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE**

Civil Case No. 00-B-1615

MARK A. TAYLOR, a minor and through his parents and next friends, MARK TAYLOR and DONNA TAYLOR, and MARK TAYLOR and DONNA TAYLOR, Individually,

Plaintiffs,

v.

JEFFERSON COUNTY SHERIFF JOHN C. STONE, individually and in his official capacity, FORMER JEFFERSON COUNTY SHERIFF RONALD BECKHAM, Individually and in his official capacity, JEFFERSON COUNTY SHERIFF'S DEPARTMENT, NEIL GARDNER, individually, JOHN HICKS, Individually, MARK M. MILLER, Individually, TANYA WILLIAMS, individually, MIKE GUERRA, individually, PHILLIP LEBEDA, individually, JOHN or JANE DOES 2 THROUGH 10, (ALL DEPUTIES IN THE JEFFERSON COUNTY SHERIFF'S DEPARTMENT), individually, JEFFERSON COUNTY SCHOOL DISTRICT R-1, FRANK DeANGELIS, Individually and in his official capacity, HOWARD CORNELL, individually and in his official capacity, PETER HORVATH, Individually, WILLIAM BUTTS, individually, GARRETT TALOCCO, individually, JUDY KELLY, Individually, TOM TONELLI, individually, TOM JOHNSON, individually, JOHN OR JANE DOES 11 THROUGH 30, individually, THOMAS KLEBOLD, SUSAN KLEBOLD, PHILLIP DURAN, JAMES ROYCE WASHINGTON, RONALD FRANK HARTMANN, J.D. TANNER, dba TANNER GUN SHOW, ROBERT KIRGIS, and KIRGIS, INC., a Colorado corporation,

Defendants.

ORDER

On December 11, 2001, plaintiffs filed their "Motion To Amend Findings, Make Additional Findings Pursuant To Fed. R. Civ. P. 52(b), Motion For Reconsideration and Relief From Order/Judgment Due To Newly Discovered Evidence Pursuant To Fed. R. Civ. P. 60(b), Motion To Amend The Pleadings, and Request For Extension of Time." The sheriff defendants and school defendants have responded to the motion. Plaintiffs' reliance on Fed. R. Civ. P. 52(b) is misplaced. That rule pertains to actions tried upon the facts

without a jury or with an advisory jury. The November 27, 2001 order of dismissal was pursuant to Fed. R. Civ. P. 12(b)(6).

I construe the motion as one for new trial pursuant to Fed. R. Civ. P. 59(e) and 60(b). The motion will be denied for the reasons stated in the companion case of *Castaldo, et al. v. Jefferson County Sheriff John C. Stone, et al.*, Civil Case No. 00-B-1611.

IT IS THEREFORE ORDERED that the motion is DENIED.

BY THE COURT:

Dated: January 23, 2002

Lewis T. Babcock, Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, CHIEF JUDGE

Civil Case No. 01-B-731

KACEY L. RUEGSEGGER,

Plaintiff,

v.

JEFFERSON COUNTY SCHOOL DISTRICT R-1, FRANK DeANGELIS, individually and in his official capacity; PETER HORVATH, individually; WILLIAM BUTTS, individually; GARRETT TALOCCO, individually; JUDY KELLY, individually; TOM TONELLI, individually; TOM JOHNSON, individually; JOHN or JANE DOES 1 THROUGH 10, individually,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
JAN 23, 2002
JAMES R. MANSPEAKER,
CLERK

ORDER

On December 20, 2001, plaintiffs filed their "Motion For Reconsideration Pursuant To F.R.C.P. 59(e), For Relief From Judgment And Leave To Amend Pursuant to F.R.C.P. 60(b) And 15(a), For Extension Of Time In Which To File Amended Pleadings, And For An Order preserving Evidence." The motion is identical to that filed in the companion case of *Castaldo, et al v. Jefferson County Sheriff John C. Stone, et al.*, Civil Case No. 00-B-1611. The school defendants have responded to the motion. For the reasons stated in Civil Case No. 00-B-1611, the motion will be denied.

IT IS ORDERED that the motion is DENIED.

BY THE COURT:

Dated: January 23, 2002

Lewis T. Babcock, Chief Judge