IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 53402

GINGER RAE BIRCH,	)	
	)	
Plaintiff-Appellant,	)	**Boise, August 2026 Term**
	)	
v.	)	**Opinion filed: November 17, 2026**
	)	
JESSICA LYNNE ROSS, CHRISTOPHER CHAD ROSS and THE ESTATE OF JESSICA LYNNE ROSS and JOHN DOES I THROUGH X,	)	**Melanie Gagnepain, Clerk**
	)	
Defendants.	)	

Appeal from the District Court of the Third Judicial District of the State of Idaho, Payette County. Kiley Stuchlik, District Judge.

The judgment of the district court dismissing the case with prejudice is vacated and the matter is remanded for further proceedings.

Birch Law Office, Fruitland, for Appellant. Bruce H. Birch submitted argument on the brief.

Jessica Lynne Ross, Christopher Chad Ross, the Estate of Jessica Lynne Ross, and John Does I through X, Respondents, did not participate in this appeal.

MOELLER, Justice.

This case concerns a family tragedy that was precipitated by a deadly automobile accident. Appellant Ginger Rae Birch was seriously injured while riding as a passenger in a vehicle driven by her daughter, Jessica Lynne Ross. Jessica and her daughter, Janice Reay (Ginger's granddaughter), died from the injuries they sustained in the accident.[1] Another passenger, Gracie Lou Ross (Jessica's daughter and Ginger's granddaughter), survived the crash.

Ginger brought suit against Jessica and her estate (the "Estate of Jessica"), alleging that Jessica's negligent driving caused the accident. She also named Jessica's husband, Christopher Ross, as a defendant. When no answer was filed, Ginger filed a motion for entry of default on the

[1] For ease of reference and clarity, this opinion refers to the parties by their first names. No disrespect is intended.

issue of liability, which the district court entered. Following an evidentiary hearing on the issue of damages, the district court sua sponte dismissed all of Ginger's claims *with prejudice*, determining that because no probate action had been initiated and no personal representative had been appointed, Ginger's claim could not proceed against the Estate of Jessica or against Jessica individually, and that Christopher was not a proper party because no negligence was alleged against him. After the district court denied Ginger's motion for reconsideration, she timely appealed.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

On February 17, 2023, Jessica was driving Ginger's 2014 Chevrolet Tahoe along Interstate 84 in Cassia County with the family while traveling from Fruitland, Idaho, to Idaho Falls, Idaho. Ginger was in the front passenger seat while Jessica's two adult children, Janice and Gracie, were in the back seat. As noted, Ginger is the mother of Jessica and the grandmother of Janice and Gracie.

While Jessica was driving the vehicle, she fell asleep and was awoken by Ginger. Earlier that day, Jessica had taken a prescribed medication that she took regularly for back pain. The medication's bottle warned that it may cause drowsiness and that individuals operating vehicles should take care. Ginger maintains that she and Janice requested that Jessica pull over and let another passenger drive. Either during or immediately following this discussion, the vehicle veered across the east-bound lane. Jessica overcorrected, hit a culvert on the side of the highway, and the vehicle rolled multiple times.

Jessica and Janice both died as a result of the accident. Gracie and Ginger survived the crash, although they suffered significant injuries.

B. Procedural Background

On January 31, 2025, Ginger filed a complaint in Payette County against Jessica, Christopher Ross (Jessica's husband), the Estate of Jessica Lynne Ross, and John Does I through X (collectively the "Defendants"). Importantly, no probate had been initiated at the time suit was filed and no personal representative of Jessica's estate had been appointed. Ginger alleged that Jessica breached her duty of ordinary care, thereby causing Ginger's injury and damages. After the Defendants failed to file an answer to the Complaint, a default was entered solely on the issue of

liability. The district court then set the matter for an evidentiary hearing to determine damages. Following that hearing, the court took the matter under advisement.

On September 2, 2025, the district court issued its Findings of Fact and Conclusions of Law, and Order Dismissing the Complaint. First, the court ruled that the claim against the Estate of Jessica was improper because it should have been brought against the personal representative of her estate under Idaho Code section 15-3-104. However, probate proceedings had not been initiated and no one had been appointed as personal representative. Second, the court ruled that Jessica was an improper party because claims could not be brought against a deceased individual. Third, the court ruled that Christopher was an improper party because Ginger had not alleged or demonstrated any negligence on his part which would render him personally liable for any of the damages she sought. Thus, the court ruled that "all claims in the [C]omplaint were not brought against the proper party . . . ." The district court then dismissed all of Ginger's claims "with prejudice" and entered a final judgment.

On September 8, 2025, Ginger filed a "Motion to Reconsider or in the Alternative Motion to Set Aside Pursuant to Rule 60(b), IRCP." Ginger argued that, although the court correctly determined that her Complaint was not brought against the proper party, the judgment should be set aside under Idaho Rule of Civil Procedure 60(b)(1) and (6). First, she argued Rule 60(b)(1) was applicable because it was an "unsubstantiated surprise" when the court—without prior notice—unexpectedly dismissed the defaulted claims with prejudice. She claimed her error was one of excusable neglect, which she defined as "neglect which might have been the act of a reasonably prudent person under the same circumstances." Utilizing this definition, Ginger asserted that her mistake was one of excusable neglect because probate law did not clearly define who has the power to file a petition for appointment of a personal representative and that, "a reasonable person, under similar circumstances, would conclude that a claimant has no authority to do so." In support, she referenced the "Declaration of Bruce Birch." Unfortunately, this document has not been included in the record on appeal.

Second, Ginger argued that the district court should set aside its order under Rule 60(b)(6) for reasons of judicial economy, justice, equity, and unnecessary dismissal. Concerning judicial economy, Ginger argued that by dismissing the action, the court "negate[d] the possibility of any financial recovery" by only leaving her with the ability to appeal—which would require extensive time and finances. Specifically, regarding time, she asserted that even if the court were to toll the

statute of limitations for the filing of a petition for appointment of a personal representative at the end of the appeal, "the time to seek recovery from the assets of the [Jessica] estate or to seek recovery of liability insurance benefits, if any, [would] have passed."

Concerning justice and equity, Ginger first claimed that "[t]he [c]ourt's Findings clearly indicate[d] that [it] erroneously entered the order of default." While Ginger did not specify why she believed this to be true, it can be inferred that she believed it was improper for the district court to enter default against what it believed to be improperly named parties. Building on this point, Ginger asserted that if the court had declined to enter the order of default (presumably because it believed the estate and Christopher were not proper defendants), then Ginger would have: (1) determined why default was not entered, (2) taken notice of her mistake earlier, (3) filed a petition for appointment of a personal representative, and (4) amended her Complaint. Accordingly, Ginger maintained that the court's mistake unfairly disadvantaged her, causing the dismissal of her case and violating principles of equity and justice.

Finally, Ginger asserted that the court had not cited any authority in support of its determination that the complaint "must be dismissed" *with prejudice*. She maintains that without requisite authority demonstrating that a dismissal with prejudice was necessary, the court should have allowed her to amend her complaint pursuant to Rule 15(c). Ginger also advised the court that an application for appointment of Christopher as Jessica's personal representative had been prepared and would be shortly filed with the court—resolving the issue at the core of the dismissal.[2]

On September 26, 2025, the district court denied Ginger's motion to reconsider or, in the alternative, set aside its final judgment. In denying Ginger's motion to reconsider, the court stated that, "[p]ursuant to [Rule 11.2(b)(1)] '[a] motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to . . . the entry of a final judgment.' " (Second and third alterations in original.) The district court concluded that because it had already entered a final judgment on Ginger's complaint, reconsideration was not available. The court also noted that, even if it were to consider the merits of the motion, it would apply the same standard as before, and Ginger had not provided a new basis for reconsideration.

[2] An estate action was filed in September 2025, and Christopher was appointed as the personal representative of the Estate of Jessica.

Regarding the motion to set aside the final judgment under Rule 60(b)(1), the court noted that "[a] reasonably prudent person would have taken the steps to ensure that the property [sic] party was named especially here where [Ginger] was aware that the sole individual allegedly at fault for the negligent conduct had died before the Complaint was filed." The court concluded that Ginger "was simply not diligent in the prosecution of her claims" and that this was not a case of excusable neglect or surprise. Accordingly, relief under Rule 60(b)(1) was not justified. The court also ruled that because the error was solely attributable to Ginger, not the court, it would not utilize its discretion to grant relief under Rule 60(b)(6). Accordingly, Ginger's motion to reconsider or set aside was denied.

Ginger then filed a Supplemental Memorandum in Support of Motion to Reconsider or Set Aside Pursuant to I.R.C.P. 60(b). Ginger alleged that, while a claim could not be enforced against a decedent's estate before a personal representative was appointed, it was not an error to name a decedent's estate as a party defendant. In fact, Ginger noted that estates are frequently listed as parties in court proceedings. Ginger also maintained that a dismissal "with prejudice" was improper because the court had not provided reasons or explanation for the dismissal for a mistake that was not egregious. She also noted that the dismissal with prejudice acted as an excessively harsh sanction because, considering that the two-year statute of limitations for a personal injury claim had run on February 17, 2025, the court's dismissal would ultimately prevent Ginger from filing her claim at all. Ginger urged that this could be remedied by granting her leave to file an amended complaint. On October 20, 2025, the court again denied Ginger's motion to reconsider. Ginger timely appealed. Having never appeared below, the Defendants did not file a response brief.

II. STANDARDS OF REVIEW

The decision whether to dismiss a case with or without prejudice is within the district court's discretion and is reviewed under an abuse of discretion standard. *Everhart v. Wash. Cnty. Rd. & Bridge Dept.*, 130 Idaho 273, 275, 939 P.2d 849, 851 (1997). This Court reviews for abuse of discretion by considering "[w]hether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

We exercise free review over questions of due process. *Floyd v. Bd. of Ada Cnty. Comm'rs*, 164 Idaho 659, 663, 434 P.3d 1265, 1269–70 (2019).

III. ANALYSIS

This appeal concerns the district court's sua sponte dismissal of Ginger's claims with prejudice. The court had previously entered a default against the defendants based on their failure to appear. Later, following an uncontested evidentiary hearing that was concerned only with the question of damages, the district court declined to enter a judgment awarding damages and instead dismissed Ginger's claims against all Defendants with prejudice. The court explained that it dismissed the action for three reasons. First, it dismissed Ginger's claims against the Estate of Jessica, because no probate proceeding had commenced and no personal representative had been appointed as required by Idaho Code section 15-3-104, which states: "No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative." Second, it dismissed Ginger's claims against Jessica as an individual, ruling that a deceased individual is not a proper party. Third, it dismissed Ginger's claims against Christopher, Jessica's husband, determining that Ginger had failed to allege any facts establishing negligence on Christopher's part.

On appeal, Ginger concedes that her Complaint was "prematurely filed" before the appointment of a personal representative. She also does not contest the dismissal of her case; however, she argues that it should have been a conditional dismissal, conditioned on the filing and appointment of a personal representative and service of an amended complaint upon the personal representative, rather than a dismissal with prejudice. She asserts that the district court erred in its determination that the Estate of Jessica was not a proper party because Idaho statutes do not preclude an estate being named as a party and there are many Idaho cases in which the estate is named as a party. On appeal, Ginger makes no argument regarding the dismissal of her claims against Jessica individually or Christopher.

Initially, we note that Ginger mischaracterizes the district court's ruling. The district court did not state that the Estate of Jessica may never be a proper party. Instead, it stated that "it is proper to dismiss the claim against the Estate of Jessica Lynne Ross because the court has no well-pled allegations to conclude that an estate has been initiated and that a Personal Representative has been appointed." Thus, as conceded by Ginger, the district court properly determined that because no probate proceedings had been initiated and no personal representative appointed, Ginger failed to comply with Idaho Code section 15-3-104. However, the crux of this appeal is not whether the district court properly dismissed Ginger's claims against the Estate of Jessica, but whether it was

proper to dismiss the entire case *with prejudice*. Notably, while the district court explained in detail why dismissal was warranted, it did not identify the legal basis for dismissing the case with prejudice. Thus, we will focus our analysis on that issue.

A. The district court violated Ginger's right to procedural due process by dismissing her case with prejudice without providing meaningful notice or an opportunity to be heard on whether a dismissal with prejudice was proper.

We turn first to whether the district court's sua sponte dismissal deprived Ginger of procedural due process because it failed to provide her with notice and a meaningful opportunity to be heard before it dismissed her Complaint with prejudice. Ginger argues that the district court's dismissal with prejudice was an "unsubstantiated surprise," because she expected a decision on the issue of damages after the evidentiary hearing. Thus, she maintains that her right to due process was violated because she was given no notice of the court's intent to dismiss her Complaint with prejudice and no opportunity to be heard on the issue.

The United States Supreme Court has held "that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances." *Logan v. Zimmerman Brush Co*., 455 U.S. 422, 429 (1982). Further, it stated that "the Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be 'the equivalent of denying them an opportunity to be heard upon their claimed right[s].' " *Id.* at 429–30 (alteration in original) (quoting *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971)). Courts conduct a two-step analysis when determining whether procedural due process has been violated: (1) "we must decide whether an individual's threatened interest is a liberty or property interest under the Fourteenth Amendment" and (2) "we determine what process is due." *S. Valley Ground Water Dist. v. Idaho Dep't of Water Res.*, 173 Idaho 762, 794, 548 P.3d 734, 766 (2024) (citations omitted).

Concerning the first step, Ginger has a protected property interest in her negligence claim because "a cause of action is a species of property." *Logan*, 455 U.S. at 428–30. As to the second step, the process due here required meaningful notice and an opportunity to be heard before that cause of action was dismissed with prejudice. *Rudd v. Rudd*, 105 Idaho 112, 115, 666 P.2d 639, 642 (1983). Here, Ginger's due process rights are implicated where the district court's dismissal with prejudice extinguished her right to pursue available adjudicatory procedures without providing Ginger with either notice or an opportunity to be heard. She had no notice that the district

court was even considering dismissing her case with prejudice, but instead was waiting on the court's ruling on damages following the evidentiary hearing. Most significantly, Ginger had no opportunity to argue to the district court whether the defect in her Complaint could be cured through appointment of a personal representative or other procedural mechanism, like a conditional dismissal.

We acknowledge that in many cases a dismissal is warranted and the trial court does not violate due process principles by doing so. What distinguishes this case is not the dismissal, but its dismissal with prejudice. Here, the district court sua sponte converted an uncontested damages proceeding into a dismissal of the action without any notice that it was considering doing so. Moreover, it did so without affording Ginger an opportunity to be heard on whether the defect the court identified could be cured. It is the absence of that opportunity that offends due process. The lack of an opportunity to be heard is particularly significant here because a dismissal with prejudice acts as a final adjudication on the merits and carries preclusive effects. *See Maravilla v. J.R. Simplot Co.*, 161 Idaho 455, 458–59, 387 P.3d 123, 126–27 (2016) ("[A] dismissal with prejudice operates as a final judgment for purposes of res judicata."). Thus, we conclude that the district court violated Ginger's right to due process by dismissing her case with prejudice without supplying her with notice and an opportunity to be heard.

B. The district court erred by dismissing Ginger's claims with prejudice without explanation.

Although the due process violation independently warrants reversal, the district court's dismissal was deficient in another respect: it failed to provide any legal or factual basis for the dismissal with prejudice. Initially, Ginger argues, citing *State Ins. Fund v. Jarolimek*, 139 Idaho 137, 139, 75 P.3d 191, 193 (2003), that dismissal with prejudice is a discretionary sanction and invokes the factors governing dismissal under Idaho Rule of Civil Procedure 37(b). However, those factors are directed at dismissals stemming from sanctions for delay or noncompliance with discovery. Critically, no discovery order or comparable violation is at issue here. The court's dismissal here clearly rested on a legal conclusion—that Ginger had not sued the proper party under Idaho Code section 15-3-104—a conclusion that Ginger does not challenge on appeal. Accordingly, we review the district court's decision to dismiss with prejudice for an abuse of discretion. *Everhart v. Wash. Cnty. Rd. & Bridge Dept.*, 130 Idaho 273, 275, 939 P.2d 849, 851 (1997).

We have frequently held that a district court abuses its discretion when it fails to adequately explain the basis for its discretionary decision so that it can be reviewed on appeal. *Schultz v. Schultz*, 145 Idaho 859, 863, 187 P.3d 1234, 1238 (2008) ("Such a lack of elaboration is considered an abuse of discretion because this Court cannot review the order to determine whether the lower court acted consistently with applicable legal standards."). In *Davis v. Tuma*, we held that the district court abused its discretion in denying the appellants' motion to amend their complaint, because it "did not articulate the relevant legal standard for evaluating a motion to amend a complaint" and "provided one sentence for its reasoning." 167 Idaho 267, 279, 469 P.3d 595, 607 (2020); *see also Munden v. Bannock County*, 169 Idaho 818, 837, 504 P.3d 354, 373 (2022). Here, the district court did not discuss dismissal with prejudice at all until the very last paragraph of its order, merely concluding: "Based on the foregoing, it is hereby ordered that all claims in the [C]omplaint are dismissed with prejudice, and the application of default judgment is denied." Thus, it is unclear whether the district court viewed the issue as discretionary, acted within those boundaries, or applied relevant legal standards.

Additionally, the court did not reach its decision to dismiss with prejudice by an exercise of reason. Because of their conclusive effect, this Court has frequently stated that "dismissals with prejudice are a 'drastic remedy which should be used sparingly.' " *Munden*, 169 Idaho at 837, 504 P.3d at 373 (quoting *Kirkham v. 4.60 Acres of Land in Vicinity of Inkom*, 100 Idaho 781, 784, 605 P.2d 959, 962 (1980)). Therefore, a court confronting a curable, non-prejudicial defect should first consider whether a less severe disposition is available. Here, the record does not reflect that the district court considered an alternative to a dismissal with prejudice even though it recognized that the defect remained curable. We conclude that the failure to do so renders the dismissal with prejudice an abuse of discretion.

While not apparent from its decision, the district court appears to have concluded that Ginger's claim was futile because no amendment or other procedural remedy could cure the defect due to the expiration of the statute of limitations. However, in this instance, the expiration of the statute of limitations for a personal injury claim does not automatically warrant dismissal with prejudice. Ginger's original complaint was filed on January 31, 2025, 17 days before the two-year limitations period of Idaho Code section 5-219 expired. Although the two-year limitations period on Ginger's negligence claim had run by the time of the September 2025 dismissal, that fact alone did not warrant foreclosing all relief. Because Ginger's original complaint was timely filed on

January 31, 2025, an amended complaint naming the personal representative could potentially "relate back" to the filing under Rule 15(c).

As noted above, the district court acknowledged that the period for commencing a probate or appointment proceeding is three years, measured from the decedent's death, and it had not yet run. *See* I.C. § 15-3-108. Therefore, the absence of an appointed personal representative was potentially curable, provided an amended complaint naming the personal representative could relate back under Rule 15(c). Moreover, naming a deceased defendant in a complaint does not render the complaint a nullity. In *Trimble v. Engelking* ("*Trimble I*"), 130 Idaho 300, 302–03, 939 P.2d 1379, 1381–82 (1997), we rejected the nullity theory and held that where a party has been improperly named, "amendment and relation back shall be allowed where the requirements of [Rule] 15(c) are met." We remanded for a determination whether those requirements would allow amendment to add the estate and relation back to the original filing. *Id.*

Importantly, section 15-3-104 does not provide that an estate may never be named as a defendant; it simply states that no proceeding to enforce a claim against the estate of a decedent may be commenced *before* the appointment of a personal representative. Thus, the defect in Ginger's Complaint was not that she prematurely named the Estate as a party; rather, the problem was that no personal representative had been appointed through whom the claim against the Estate could proceed. While this defect prevented Ginger from prosecuting her claim against the Estate, it does not affect the viability of the underlying Complaint. As we have explained, under *Trimble I*, naming an improper or deceased party does not render a complaint a nullity. Amendment and relation back are available if the requirements of Rule 15(c) are met. *Id.*

To be clear, notwithstanding these observations, we offer no opinion as to the viability of any of the procedural mechanisms mentioned here as applied to the facts of the case at bar. Because this determination belongs to the trial court in the first instance, we express no view on whether Rule 15(c) is or can be satisfied in this case. However, relation back of an amendment changing the party requires, among other things, that "within the period provided by Rule 4(b)(2) for serving the summons and complaint," the party being brought in received sufficient "notice of the action that it will not be prejudiced in defending on the merits" and "knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity." I.R.C.P. 15(c)(1)(C); *see Damian v. Est. of Pina*, 132 Idaho 447, 449, 974 P.2d 93, 95 (Ct. App. 1999) (construing the prior rule). On remand, the district court must determine whether the

requirements of Rule 15(c) can be met—including whether any applicable tolling provision, such as Idaho Code section 15-3-802(b) (which suspends the running of a limitations period "during the four (4) months following the decedent's death but resumes thereafter"), bears on the timeliness analysis. *See Trimble v. Engelking* ("*Trimble II*"), 134 Idaho 195, 197, 998 P.2d 502, 504 (2000). While leave to amend should be freely given when justice so requires, I.R.C.P. 15(a)(2), it remains subject to the availability of a statute of limitations defense. *See Hayward v. Valley Vista Care Corp.*, 136 Idaho 342, 346, 33 P.3d 816, 820 (2001).

Accordingly, we vacate the order dismissing the Complaint with prejudice and remand with instructions to permit Ginger to seek leave to amend to name the personal representative and to determine whether the amended complaint relates back to the original filing under Rule 15(c).

C. Although the district court's stated reason for denying reconsideration was erroneous, reassignment to a different judge is not warranted.

At the close of Ginger's brief, she seems to request that this case be reassigned to a different district court judge on remand. Specifically, she states: "Based upon the experience of [Ginger]'s counsel as a licensed attorney since 1980, having appeared in all Idaho Federal and state courts, [Ginger] is concerned with the possibility that the [d]istrict [c]ourt may not be willing to comply with this Court's findings and recommendations." Although not explicitly set forth, it appears that the nature of the district court's rulings on several issues forms the bases for this request.

This Court has discretion to reassign cases, but typically only does so in exceptional circumstances, such as where the record demonstrates bias, an appearance of impropriety, or an antagonistic relationship between the court and the parties. *See Beebe v. N. Idaho Day Surgery, LLC*, 171 Idaho 779, 793, 526 P.3d 650, 664 (2023) (holding that the district court's comments displayed bias against the attorneys); *Hepworth Holzer, LLP v. Fourth Jud. Dist. of State*, 169 Idaho 387, 400, 496 P.3d 873, 886 (2021) (reassigning where the judge was made a party to the case); *Hollis v. State*, 174 Idaho 168, 177, 551 P.3d 1262, 1271 (2024) (finding that the antagonistic relationship between the court and counsel could call into question the court's impartiality).

We acknowledge that the district court's stated reason for denying Ginger's motion to reconsider or set aside pursuant to Rule 60(b) is concerning. The district court ruled that Ginger had failed to meet the time constraints of Rule 11.2. In reaching this conclusion, the district court quoted only a portion of the rule, which materially changed its application. The court quoted Rule 11.2 as follows: "[a] motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to . . . the entry of a final judgment." (Alterations in original.)

However, the language removed by the court's use of an ellipsis in the middle of the sentence was crucial. Reinserting the language omitted from the quote, Rule 11.2 correctly reads:

> A motion to reconsider any order of the trial court entered before final judgment may be made at any time prior to *or within 14 days after* the entry of a final judgment.

I.R.C.P. 11.2(b)(1) (emphasis added).

The omitted language was dispositive of the issue of timeliness because the final judgment was entered on September 2, 2025. Ginger filed her motion to reconsider only six days later, on September 8, 2025. Thus, the court erred by determining that her motion to reconsider was untimely.[3] In addition, we note that the district court likely misperceived Ginger's motion to reconsider because it cited the abuse of discretion standard for a court's discretion to enter or deny default judgment and concluded: "it properly exercised its discretion to deny the entry of default judgment and dismiss the [C]omplaint." However, Ginger did not request reconsideration of the denial of the default judgment; rather, she asked the court to reconsider its dismissal of her Complaint *with prejudice*.

We note that we have only addressed these errors because they appear to be the basis for Ginger's request for reassignment of the case. However, while the district court erred by failing to correctly apply the law, we conclude that there is nothing in the record to suggest that its mistakes were deliberate or that the court was biased. Ginger provided no specific reasoning for why the presiding judge would be unable or unwilling to comply with this Court's holding. Therefore, we decline to reassign this matter to another district judge.

IV. CONCLUSION

Because Ginger has not challenged the dismissal of her claims against Jessica individually or against Christopher on appeal, we do not disturb the dismissal of those claims. However, for the foregoing reasons, the final judgment dismissing Ginger's remaining claims with prejudice is vacated and the case is remanded for proceedings consistent with this opinion.

Chief Justice BRODY, Justices BEVAN, ZAHN, and MEYER CONCUR.

(This matter was decided prior to the retirement of Chief Justice Bevan and he participated fully.)

[3] We recognize that the district court also stated, in the alternative, that it could deny reconsideration on the merits because Ginger had identified no new basis for relief under Rule 11.2. Because we vacate the judgment on independent grounds, we need not decide whether that alternative ground would have independently supported the denial.