NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-3178

In re: LAURENCE A. HECKER, Debtor

STEVEN D'AGOSTINO,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 3-20-cv-06330)
District Judge: Honorable Freda L. Wolfson

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 14, 2022

Before: MCKEE, SHWARTZ, and MATEY, Circuit Judges

(Opinion filed: July 19, 2022)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Steven D'Agostino, proceeding pro se, appeals from the District Court's order affirming the Bankruptcy Court's adverse ruling and the District Court's order denying his subsequent motion for reconsideration. We will affirm.

In May 2010, Laurence A. Hecker filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of New Jersey. The Bankruptcy Court appointed the appellee, Bunce D. Atkinson, as trustee of the estate. In January 2011, Hecker received a discharge and Atkinson issued a report of no distribution. Approximately nine years later, D'Agostino, a creditor of Hecker, filed a motion to reopen Hecker's bankruptcy case in order to pursue a state-court action against Atkinson.[1] In the motion, D'Agostino claimed that Atkinson had breached his duties by failing to provide him with notice of various proceedings in the bankruptcy case. The Bankruptcy Court denied D'Agostino leave to pursue the proposed action on the ground that he failed to make a prima facie case that his claims were "not without foundation." In re VistaCare Grp., LLC, 678 F.3d at 232. Specifically, the Bankruptcy Court concluded that Atkinson was shielded from liability under the doctrine of qualified immunity. D'Agostino sought reconsideration, but the Bankruptcy Court denied relief. Upon review, the United States District Court for the District of New Jersey affirmed. D'Agostino sought

[1] It is undisputed that D'Agostino was required to obtain permission from the Bankruptcy Court before pursuing his suit against Atkinson. See Barton v. Barbour, 104 U.S. 126, 128 (1881) (barring suit against a receiver unless "leave of the court by which he was appointed [was] obtained"); In re VistaCare Grp., LLC, 678 F.3d 218, 224 (3d Cir. 2012) (holding that the Barton doctrine extends to lawsuits against a bankruptcy trustee for acts done in the trustee's official capacity).

reconsideration of that order as well but was likewise denied relief. This appeal followed.

The District Court had jurisdiction over the appeal from the Bankruptcy Court under 28 U.S.C. § 158(a), and we have jurisdiction under 28 U.S.C. §§ 158(d) and 1291. On appeal, "we 'stand in the shoes' of the District Court and review the Bankruptcy Court's decision." In re Global Indus. Techs., Inc., 645 F.3d 201, 209 (3d Cir. 2011) (en banc) (citations omitted). We review a bankruptcy court's decision to deny a motion for leave to sue a trustee for abuse of discretion. In re VistaCare Grp., LLC, 678 F.3d at 224. We review the District Court's denial of reconsideration for abuse of discretion. See In re Fowler, 394 F.3d 1208, 1214 (9th Cir. 2005).

The Bankruptcy Court did not abuse its discretion here. First, we agree with the Bankruptcy Court that D'Agostino failed to make a prima facie case that his claims against Atkinson were "not without foundation," In re VistaCare Grp., LLC, 678 F.3d at 224 (quotation marks omitted), as Atkinson was entitled to qualified immunity, see In re J & S Props., LLC, 872 F.3d 138, 143 (3d Cir. 2017). "To overcome qualified immunity, a plaintiff must plead facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct." Mammaro v. N.J. Div. of Child Prot. & Permanency, 814 F.3d 164, 168–69 (3d Cir. 2016) (quotation marks omitted). As the Bankruptcy Court explained, D'Agostino did not claim that Atkinson violated any statutory rights. While he did claim that Atkinson's failure to notify him of proceedings amounted to a due process violation, it was Hecker's duty, not Atkinson's, to provide him with notice. See 11 U.S.C. § 704(a)

(listing the trustee's duties). To the extent that D'Agostino asserts that Atkinson failed to comply with certain requirements in the Handbook for Chapter 7 Trustees, the Handbook does not set forth statutory requirements. See generally U.S. Dep't of Justice, Executive Office for U.S. Trustees, Handbook for Chapter 7 Trustees.

Second, the District Court acted within its discretion in denying D'Agostino's motion for reconsideration. D'Agostino asserted that he had obtained evidence demonstrating that Atkinson should have been disqualified from serving as trustee in the Hecker case because he and Hecker were acquaintances. As the District Court explained, the evidence indicates only that Atkinson and Hecker were both members of the same professional organization.

We have considered D'Agostino's remaining arguments on appeal and conclude that they are meritless. Accordingly, we will affirm.

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JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a) on June 14, 2022. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered November 16, 2021, be and the same is hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: July 19, 2022

Certified as a true copy and issued in lieu of a formal mandate on August 23, 2022

Teste: Patricia A Dodszuweit

Clerk, U.S. Court of Appeals for the Third Circuit

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
(609) 989-2182

CHAMBERS OF
FREDA L. WOLFSON
CHIEF JUDGE

Clarkson S. Fisher Federal Building
& U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

LETTER ORDER

November 16, 2021

Steven D'Agostino, *pro se*
25 Nautilus Drive
Barnegat, New Jersey 08005

Bunce D. Atkinson, Esq.
The Kelly Firm, P.C.
1011 Highway 71
Spring Lake, New Jersey 07762

RE: ***Steven D'Agostino v. Bunce D. Atkinson, Esq.***
Civ. No. 20-06330 (FLW)

Dear Litigants:

Appellant Steven D'Agostino ("Appellant" or "D'Agostino") moves for reconsideration ("Motion for Reconsideration") of the Court's Letter Order dated March 24, 2021 ("Prior Letter Order"), rejecting his appeal and affirming the Bankruptcy Court's Order denying D'Agostino's motion for leave to pursue claims against Appellee Bunce Atkinson, Esq. ("Appellee" or "Atkinson") in the Superior Court of New Jersey. For the foregoing reasons, D'Agostino's Motion for Reconsideration is **DENIED**.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Because the factual background of this matter is set forth in the Court's Prior Letter Order, I will only recount the necessary facts for the resolution of this motion.

This case arises from a *pro se* petition for relief under Chapter 7 of the United States Bankruptcy Code filed by attorney Laurence A. Hecker ("Hecker"). D'Agostino, a former client

of Hecker, obtained a legal malpractice judgment against Hecker in May 2009 for $385,399.32; however, D'Agostino was not originally listed as a creditor in Hecker's bankruptcy petition. Because Hecker never filed an amended creditor matrix throughout the course of the bankruptcy action, D'Agostino's name was not included on the creditor list for notices sent by the Bankruptcy Court Clerk's Office. Atkinson served as the bankruptcy Trustee of the Hecker Bankruptcy.

On October 21, 2019, approximately eight years after the Hecker Bankruptcy case closed, D'Agostino filed suit against Atkinson and Hecker's personal bankruptcy attorney, Karen Bezner, Esq., in the Superior Court of New Jersey, captioned *Steven D'Agostino v. Karen Bezner, Esq. and Bunce Atkinson, Esq.*, Superior Court of New Jersey, Law Division, Civil Part, Ocean County, Docket No. OCN-L-2326-19 ("Superior Court Action"). As to Atkinson, the Superior Court Action seeks damages for breach of fiduciary duty, professional negligence, tortious interference, as well as declaratory relief. Specifically, D'Agostino claims that Atkinson failed in his duties as a Trustee by not noticing D'Agostino of various bankruptcy proceedings.

On March 3, 2020, D'Agostino filed a Motion to Reopen the Hecker Bankruptcy Case, and requested leave to pursue his clams against Atkinson in the Superior Court Action. (Bankruptcy ECF No. 37.)

On April 3, 2020, following oral argument, the Bankruptcy Court granted D'Agostino's Motion to Reopen the Hecker Bankruptcy Case, but it denied D'Agostino's request for leave to pursue the Superior Court Action. (*See, e.g.*, Bankruptcy ECF No. 74 ("Motion for Leave Transcript") at 17:4-6; Bankruptcy ECF No. 48.) In denying D'Agostino's request, the Bankruptcy Court found that "D'Agostino's position highlights the need for qualified immunity for Chapter 7 Trustees," pursuant to *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) and *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). (*See* Bankruptcy ECF No. 48 at 7.) In that regard, the Bankruptcy

Court found that not only were Atkinson's actions as Trustee reasonable, but D'Agostino failed to articulate any statutory or constitutional rights which Atkinson purportedly violated. (*Id.* at 7.)

Following an unsuccessful motion for reconsideration of the Bankruptcy Court's Order, D'Agostino filed a notice of appeal with this Court. On March 24, 2021, the Court denied D'Agostino's appeal and affirmed the Bankruptcy Court's Order and Statement of Reasons denying D'Agostino's motion for leave to pursue certain claims against Atkinson in the State Court Action. Specifically, I agreed with the Bankruptcy Court's determination that, in the context of qualified immunity, D'Agostino did not meet his burden of establishing that his claims against Atkinson were "not without foundation." I explained that in the State Court Action's Amended Complaint, D'Agostino asserts that Atkinson acted negligently, breached a fiduciary duty, and tortiously interfered with D'Agostino's prospective economic advantage. Each claim asserted by D'Agostino against Atkinson in the State Court Action is premised on Atkinson's failure to inform D'Agostino of various events in the Hecker Bankruptcy Case, including Atkinson's purported failure to inform D'Agostino of the petition filed by Hecker, failure to include D'Agostino on the creditor notice matrix, and failure to provide him with a "proof of claim."

As such, the Court found that the Bankruptcy Court correctly determined that Atkinson, as Trustee, was under no statutory duty or obligation to notice D'Agostino, as a creditor. (Prior Letter Order, 8.) As set forth in the Prior Letter Order, pursuant to Bankruptcy Rule 2002(a)(1), the Clerk, not the Trustee, provides notice to creditors of the filing of a petition and the date for the first meeting of creditors, and this notice is generated using the debtor's creditor matrix. (*Id.*) Therefore, I agreed with the Bankruptcy Court's assessment that "[i]t was Hecker who failed to update his creditor matrix when adding D'Agostino as a creditor. It was Hecker who failed to

notice D'Agostino of the motion to reinstate the case. The failure of service gave D'Agostino potential avenues to pursue Hecker." (*Id.* at 8-9) (emphasis added).

Moreover, the Prior Letter Order indicated that D'Agostino had at least some knowledge of the Hecker Bankruptcy's proceedings. (*Id.* at 9.) I noted that D'Agostino acknowledged on his appeal that he was aware of the Hecker Bankruptcy Case in or around June 2010, knew of the case's dismissal in July 2010, and later learned, from a conversation with Hecker in 2013, that the case had been reinstated and Hecker had received his Chapter 7 discharge. (*Id.*) Indeed, D'Agostino further acknowledged that he was in contact with an attorney shortly thereafter, who advised him that he might still have certain rights. (*Id.*) The Court emphasized that despite this knowledge, however, D'Agostino still did not act until four years later, after Hecker's death. (*Id.*)

Finally, with respect to D'Agostino's argument that Atkinson's purported failure to comply with the Trustee Handbook prevents him from enjoying qualified immunity protection, the Court found that argument unpersuasive. The Court explained that no evidence exists in the record to even suggest that the Trustee Handbook "require[d Atkinson] to check the accuracy of the notice matrix," as D'Agostino claims, and even assuming that the Trustee Handbook did include such a provision, that finding, alone, would not alter the outcome because, like the Bankruptcy Court found below, the Trustee Handbook contains only "guidelines," not statutory obligations or affirmative rules. (*Id.* at 11.)

On April 20, 2021, nearly one month after the Prior Letter Order, D'Agostino filed the instant Motion for Reconsideration. (ECF No. 17.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 59(e) and Local Civil Rule 7.1 govern motions for reconsideration. In particular, pursuant to Local Civil Rule 7.1(i), a litigant moving for

reconsideration must "set[ ] forth concisely the matter or controlling decisions which the party believes the Judge or Magistrate Judge has overlooked[.]" L. Civ. R. 7.1(i). Motions for reconsideration are considered "extremely limited procedural vehicle[s]." *Resorts Int'l v. Greate Bay Hotel & Casino*, 830 F. Supp. 826, 831 (D.N.J. 1992). Indeed, requests for reconsideration "are not to be used as an opportunity to relitigate the case; rather, they may be used only to correct manifest errors of law or fact or to present newly discovered evidence." *Blystone v. Horn*, 664 F.3d 397, 415 (3d Cir. 2011) (citing *Howard Hess Dental Labs., Inc. v. Dentsply Int'l Inc.*, 602 F.3d 237, 251 (3d Cir. 2010)); *see also N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995). A "judgment may be altered or amended [only] if the party seeking reconsideration shows 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 to dismiss]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Blystone*, 664 F.3d at 415 (quotations omitted). "A party seeking reconsideration must show more than a disagreement with the Court's decision, and 'recapitulation of the cases and arguments considered by the court before rendering its original decision fails to carry the moving party's burden.'" *G-69 v. Degnan*, 748 F. Supp. 274, 275 (D.N.J. 1990) (citation omitted). In other words, "a motion for reconsideration should not provide the parties with an opportunity for a second bite at the apple." *Tischio v. Bontex, Inc.*, 16 F. Supp. 2d 511, 533 (D.N.J. 1998) (citation omitted). Rather, a difference of opinion with the court's decision should be dealt with through the appellate process. *Florham Park Chevron, Inc. v. Chevron U.S.A., Inc.*, 680 F. Supp. 159, 162 (D.N.J. 1998).

III. DISCUSSION

On this Motion for Reconsideration, D'Agostino argues that the Court should reconsider its ruling in the Prior Letter Order because (1) the Prior Letter Order contained certain "factual mistakes," (2) the Court applied the wrong standard in denying his appeal, and (3) newly discovered evidence compels reversal.

Considering the substance of D'Agostino's arguments, however, the Court denies his reconsideration application. First, D'Agostino argues that contrary to the Court's finding in the Prior Letter Order, he provided relevant portions of the Trustee Handbook and that, in addition to arguing that Atkinson violated the Handbook by not confirming the notice matrix, he also argued that Atkinson violated other provisions of the Trustee Handbook and certain statutory obligations. Specifically, as to the Trustee Handbook, D'Agostino claims that he first provided the Bankruptcy Court with relevant portions of the Handbook on March 19, 2020, in connection with his reply brief in further support of his motion for leave. D'Agostino also claims that he provided those same excerpts from the Trustee Handbook to this Court in connection with his moving brief in support of his appeal. While D'Agostino did append piecemeal excerpts from the Trustee Handbook to his appeal, because those excerpts were provided without context and without explanation, the Court could not discern whether those excerpts were taken from the Trustee Handbook in effect at the time of Atkinson's alleged improper conduct or a later version. Nonetheless, even if the excerpts provided are from the applicable Trustee Handbook, they do not alter the Court's decision. Indeed, as already discussed in the Prior Letter Order "the Trustee Handbook contains only 'guidelines,' not statutory obligations or affirmative rules. (Prior Letter Order, 11) (emphasis added); *see also In Re: J & S Properties, LLC*, 872 F.3d 138, 144-45 (3d Cir.

2017) (finding that a trustee's compliance with statutory obligations controls the decision on qualified immunity, not compliance with the Trustee Handbook).

With respect to Atkinson's purported violation of statutory obligations, the Court finds that the Prior Letter Order sufficiently addressed D'Agostino's arguments in that regard. The Court found that Atkinson, as Trustee, was under no statutory duty or obligation to notice D'Agostino, as a creditor. I agreed with the Bankruptcy Court that pursuant to Bankruptcy Rule 2002(a)(1), the Clerk, not the Trustee, provides notice to creditors of the filing of a petition and the date for the first meeting of creditors, and this notice is generated using the debtor's creditor matrix. Moreover, the Court found that when analyzing Atkinson's conduct in connection with his statutory duties as Trustee, he acted reasonably.

Next, D'Agostino contends that the Court "applied the wrong standard" in denying his appeal; however, he also confusingly states that the Prior Letter Order "correctly set forth that I only had a minimal burden of showing that my case against Atkinson was 'not without foundation...'" (D'Agostino Moving Br., 3.) In this regard, the Court finds that D'Agostino's argument amounts to mere disagreement with the Court's application of the standard, not the standard itself. Disagreement, however, is not a proper basis for reconsideration. *See Hackensack Riverkeeper, Inc. v. Delaware Otsego Corp.*, No. 05-4806, 2007 WL 1749963, at *3 (D.N.J. June 15, 2007) (denying reconsideration where "[t]he substance of Plaintiffs' argument ... is that the Court came to the wrong conclusion, not that the Court overlooked controlling standards and law.").

Finally, D'Agostino claims that "newly discovered evidence" necessitates reversal of the Court's Prior Letter Order. He claims that in a certification dated March 19, 2020, Atkinson denied knowing Hecker either personally or professionally prior to the meeting held on October 25, 2010,

pursuant to 11 U.S.C. § 341. However, according to D'Agostino, newly discovered evidence suggests that Hecker and Atkinson actually knew each other "long before and long after this bankruptcy case." (D'Agostino Moving Br., 5-6.) According to D'Agostino, Hecker and Atkinson were "both very active in the Monmouth Bar Association (MBA), which prior to COVID, held various social events every other month..." (*Id.* at 6.) D'Agostino contends that in the mid-2000s, Atkinson's law firm partner was the president of the MBA, while concurrently Atkinson was heavily involved in the operation of the MBA. (*Id.*) Moreover, D'Agostino submits that Atkinson "was/is the chairman of several MBA committees, including the golf events committee," and that "Hecker participated in many of these social events, including in particular, the November 2012 golf Country Club event, which was being run by Atkinson." (*Id.*) In addition, D'Agostino claims that Hecker and Atkinson were both alumni of Rutgers Law School, and both Hecker and Atkinson participated in alumni events. (*Id.* at 6-7.) According to D'Agostino, this newly discovered evidence suggests that Atkinson "intentionally turned a blind-eye to Hecker's bankruptcy fraud so as to assist a colleague," and therefore, Atkinson's conflict of interest warrants reconsideration of the Court's Prior Letter Order. (*Id.* at 5.)

Here, D'Agostino's "new evidence" includes a copy of the September 2005 edition of the Monmouth Memoranda—a MBA publication; several general emails sent by the MBA to its members advising of social events and seminars—some of which were sent after the Hecker Bankruptcy; an email from Hecker to the MBA regarding the Barrister Ball in 2012, which was sent after the Hecker Bankruptcy case had been closed for almost two years; a listing of Hecker as a member of the MBA; and a portion of a MBA webpage. First, even if D'Agostino's evidence could be construed to suggest a more nefarious purpose, the Court cannot find that this evidence is "newly discovered." *See Stokes v. Internal Affairs Section*, No. 19-20414, 2020 WL 2537575,

at *2 (D.N.J. May 19, 2020) ("Evidence that could have been discovered earlier through the exercise of due diligence does not constitute newly discovered evidence for reconsideration purposes."); *Leja v. Schmidt Mfg., Inc.*, 743 F. Supp. 2d 444, 456 (D.N.J. 2010) ("Since the evidence relied upon in seeking reconsideration must be 'newly discovered,' a motion for reconsideration may not be premised on legal theories that could have been adjudicated or evidence which was available but not presented prior to the earlier ruling."); *Lopez v. Corr. Med. Servs.*, No. 04-2155, 2010 WL 3881212, at *2 (D.N.J. Sept. 27, 2010) ("For purposes of reconsideration, new evidence is not evidence that a party submits or obtains after an adverse ruling, but rather new evidence constitutes evidence that a party could not submit to the court because it was not previously available."). D'Agostino fails to explain why these documents could not have been discovered earlier through the exercise of due diligence; especially given that evidence is not considered to be previously unavailable simply because a party now accesses it following an adverse ruling. Indeed, not only was this evidence available to D'Agostino at the time he filed his appeal, but the evidence was also seemingly available at the time he requested leave from the Bankruptcy Court to pursue the State Court Action.

Moreover, even if this evidence could be deemed "newly discovered," the Court does not find that it would alter the outcome of Plaintiff's appeal. Indeed, Atkinson certifies that he never met Hecker, personally or professionally, prior to the Section 341(a) meeting, that he never socialized with Hecker at any MBA function or event, and that contrary to D'Agostino's assertion, he never served as an officer or President of the MBA. (Certification of Bunce Atkinson, Esq. in Opposition to Motion for Reconsideration, ¶¶ 7, 9, 10, 15.) Rather, Atkinson explains that in 2019, two years after Hecker's death, he was elected to a three-year term as a MBA Trustee; however, he resigned as a Trustee in April 2020. (*Id.* at ¶ 10.) Put simply, I find that the supposed "new

evidence" merely demonstrates that Hecker and Atkinson were members of the same professional organization for a finite period of time. None of the evidence provided by D'Agostino, however, demonstrates a direct personal or professional connection between Hecker and Atkinson. But, more importantly, even if Atkinson had a personal relationship with Hecker, D'Agostino has presented no evidence that Atkinson had a conflict of interest because of the relationship or that Atkinson did in fact assist Hecker in carrying out any alleged fraudulent scheme. Rather, it is all based on D'Agostino's unsupported speculations.

IV. CONCLUSION

Accordingly, based on the foregoing reasons, Appellant's Motion for Reconsideration is **DENIED**.

SO ORDERED.

/s/ Freda L. Wolfson
Hon. Freda L. Wolfson
U.S. Chief District Judge

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Clerk

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(D.C. Civil Action No. 3-20-cv-06330)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, McKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Patty Shwartz
Circuit Judge

Dated: August 15, 2022
Tmm/cc: Steven D'Agostino
Bunce D. Atkinson, Esq.
Laurence A. Hecker, Esq.

NOT PRECEDENTIAL

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reconsideration of that order as well but was likewise denied relief. This appeal followed.

The District Court had jurisdiction over the appeal from the Bankruptcy Court under 28 U.S.C. § 158(a), and we have jurisdiction under 28 U.S.C. §§ 158(d) and 1291. On appeal, "we 'stand in the shoes' of the District Court and review the Bankruptcy Court's decision." In re Global Indus. Techs., Inc., 645 F.3d 201, 209 (3d Cir. 2011) (en banc) (citations omitted). We review a bankruptcy court's decision to deny a motion for leave to sue a trustee for abuse of discretion. In re VistaCare Grp., LLC, 678 F.3d at 224. We review the District Court's denial of reconsideration for abuse of discretion. See In re Fowler, 394 F.3d 1208, 1214 (9th Cir. 2005).

The Bankruptcy Court did not abuse its discretion here. First, we agree with the Bankruptcy Court that D'Agostino failed to make a prima facie case that his claims against Atkinson were "not without foundation," In re VistaCare Grp., LLC, 678 F.3d at 224 (quotation marks omitted), as Atkinson was entitled to qualified immunity, see In re J & S Props., LLC, 872 F.3d 138, 143 (3d Cir. 2017). "To overcome qualified immunity, a plaintiff must plead facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct." Mammaro v. N.J. Div. of Child Prot. & Permanency, 814 F.3d 164, 168–69 (3d Cir. 2016) (quotation marks omitted). As the Bankruptcy Court explained, D'Agostino did not claim that Atkinson violated any statutory rights. While he did claim that Atkinson's failure to notify him of proceedings amounted to a due process violation, it was Hecker's duty, not Atkinson's, to provide him with notice. See 11 U.S.C. § 704(a)

(listing the trustee's duties). To the extent that D'Agostino asserts that Atkinson failed to comply with certain requirements in the Handbook for Chapter 7 Trustees, the Handbook does not set forth statutory requirements. See generally U.S. Dep't of Justice, Executive Office for U.S. Trustees, Handbook for Chapter 7 Trustees.

Second, the District Court acted within its discretion in denying D'Agostino's motion for reconsideration. D'Agostino asserted that he had obtained evidence demonstrating that Atkinson should have been disqualified from serving as trustee in the Hecker case because he and Hecker were acquaintances. As the District Court explained, the evidence indicates only that Atkinson and Hecker were both members of the same professional organization.

We have considered D'Agostino's remaining arguments on appeal and conclude that they are meritless. Accordingly, we will affirm.