

IN THE COURT OF COMMON FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DENNIS SWIFT,)	
)	
Plaintiff,)	
)	
v.)	
)	
CAPTAIN MARK HITCH,)	C.A. No. CPU4-09-005254
WILLIAM STREETS,)	C.A. No. CPU4-09-005286
JOHN PULLIN)	C.A. No. CPU4-09-005280
)	
Defendants.)	

Date Submitted: September 10, 2010
Date Decided: January 7, 2011

Mr. Dennis Swift
2116 Carol Drive
Wilmington, DE 19808
Pro-Se Plaintiff

Ms. Harshal Purohit-Patel, Esquire
Assistant County Attorney
87 Reads Way
New Castle, DE 19720
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ON PLAINTIFF’S MOTION TO REOPEN

Plaintiff, Dennis Swift, (hereinafter “Swift”) moves pursuant to *Court of Common Pleas Civil Rule 59(e)* for reconsideration of the Court’s Order of February 4, 2010 dismissing these proceedings against the defendants herein. In that decision, the Court concluded the motion had merit because the complaint failed

to state a claim upon which relief can be granted. This is the Court's decision on Plaintiff's Motion.

Procedural History

A criminal trial was scheduled against Swift on February 15, 2007, which was continued by the Court due to the failure of Swift's subpoenaed witnesses to appear. On June 8, 2007, this Court denied the State's motion to quash plaintiff's subpoenas. The case was continued to July 9, 2007 to permit Swift to subpoena the witnesses a second time. Prior to commencement of the July 9, 2007 trial, the Court conducted a second hearing on the pending discovery motions and a renewed State motion to quash plaintiff's subpoenas.

During the second hearing, the Court found Captain Mark Hitch's (hereinafter "Hitch") testimony and documentation from him was irrelevant and accordingly quashed the subpoena for Hitch.¹ The criminal trial transcript for the July 2007 date indicates William Streets (hereinafter "Streets") appeared, testified and produced all documentation in his possession.² Finally, this Court held there was no subpoena return for John Pullin (hereinafter "Pullin") for the July 2007 date reflected in the Court's record. The Court confirmed with the Clerk that a subpoena was never sent out for Pullin for the July 2007. Thus, the Court

¹ Trial Transcript of July 9, 2007, page 21-22.

² Trial Transcript of July 9, 2007, pages 27-34

concluded Mr. Swift failed to discharge his responsibility to verify that appropriate subpoenas were sent out for his witnesses.

The criminal jury trial proceeded against Swift on July 9 and July 10, 2007 in which he was found guilty of harassment. Swift filed this debt action on July 10, 2009, citing 10 *Del. C.* § 4301.³ In his complaint, Swift alleges his witnesses which were subpoenaed for his criminal trial originally scheduled for February 15, 2007 failed to appear. Specifically, Swift alleges that his subpoenaed witnesses did not appear and documents demanded by subpoena *duces tecum* were not produced due to an instruction by the Deputy Attorney General. Swift seeks damages in the amount of \$49,500.00 as to each Defendant in this matter.

Defendants filed a motion to dismiss which was granted by this Court on August 21, 2009. Swift filed a motion to reopen which was granted on September 10, 2009. Defendants filed a second motion to dismiss, which was granted by this Court on February 4, 2010. Swift filed this motion to reopen on March 5, 2010, and the Court heard oral arguments on September 10, 2010. This is the Court's opinion on the pending motions following written submissions.

³ 10 *Del. C.* § 4301 provides: "If any person, duly summoned by process to attend as a witness before any court, justice of the peace, or other officer, lawfully authorized to issue the same, without reasonable excuse, fails to attend, according to the direction of such process; or attending refuses to testify when required by such court, justice of the peace, or other officer, such person shall be liable to the aggrieved party for all damages occasioned by such failure or refusal, to be recovered in a civil action."

Prior Decisions By This Court

After Swift filed this Complaint on July 10, 2009, Defendants Captain Mark Hitch and William Streets filed a motion to dismiss for failure to state a claim upon which relief can be granted. Defendants argued that as parties in the action they had no relevant information to the charge for which Swift was found guilty on July 10, 2007. This Court granted that motion on August 21, 2009 after Swift failed to appear for the hearing. Swift had previously failed to respond to Defendants' motion to dismiss and this Court treated the motion as unopposed for Swift's failure to respond and appear.

Swift filed a motion to reopen on September 10, 2009, and the Defendants responded with a motion to dismiss. The motions were heard on February 4, 2010. Following the hearing, the Court dismissed the individuals herein as party defendants. The Court found that the subpoena for Captain Mark Hitch had properly been quashed by this Court on the date of trial, thus not requiring Hitch to appear or produce any documents. The Court also dismissed the claims against Pullin on the basis that the Court had previously held Pullin had not been properly subpoenaed for trial.

Finally, the Court found Streets had appeared and testified at the criminal trial of Swift on July 9, 2007. Accordingly, the Court dismissed Streets as a party defendant.

Plaintiff's Contentions

Swift states he appeared before this Court on February 15, 2007 for a criminal trial on the charge of harassment. At that time, the Court continued the matter due to the fact that none of the three (3) New Castle County employees, whom Swift alleged that he had subpoenaed, appeared as ordered. Swift provided portions of the record to the Court that Swift allege clearly prove Hitch, Streets and Pullin were subpoenaed and failed to appear for the trial on February 15, 2007. Swift further argues that notwithstanding the subpoena for Hitch was quashed prior to the July 2007, such does not defeat his argument of whether a valid subpoena for Hitch was in force when he failed to appear for the February 15, 2007 criminal trial. Swift further contends that he has a copy of the Sheriff's subpoena return for Pullin for the February 15, 2007 criminal trial date.

Finally, Swift alleged that most of the items he subpoenaed *duces tecum* were never produced which resulted in a finding of guilty in his criminal trial, held in July 2007. Swift contends that if all his subpoenaed witnesses had appeared on February 15, 2007, they would have brought all of the evidence he required. Swift contends that the basis of the civil litigation against the Defendants rests upon the fact that an issued subpoena requires the mandatory appearance by the

subpoenaed party; for which such subpoenaed witnesses did not appear on February 15, 2007.

Further, Swift contends the scope of the present litigation reveals he attended a trial, had subpoenaed witnesses which failed to appear, thus 10 Del. C. § 4301 clearly applies, “which provide if a witness fails to appear which has been duly summoned, that witness is liable for civil damages.”

Swift also alleges that the Deputy Attorney General committed obstruction of justice by instructing Swift’s witnesses to not appear for the criminal trial on February 15, 2007. Swift further contends the Defendants have failed to file an Answer to the complaint. Due to the foregoing reasons, Swift argues that he has suffered irreparable harm.

Defendants’ Contentions

Defendants contend Swift raises identical issues as he did in his motion to re-open heard before this Court on February 4, 2010. Further, Defendants argue the transcript of the July 9, 2007 criminal trial for Swift clearly shows all issues related to the subpoenas were properly decided by this Court. They reasoned that this is evident by the fact that the Court quashed the subpoena for Hitch, Streets appeared for the trial and testified and Court records indicate Pullin was never properly served.

Defendants argue Swift's motion to re-open lacks merit and there is no basis set forth for which the Court should reconsider its order of February 4, 2010. Defendants contend there is no evidence to show that this Court erred in any legal and/or factual consideration during the February 4, 2010 hearing. The issues were considered on their merit and Swift has not put forth any new position not previously considered by the Court. Defendants contend Swift can point to no injury he suffered at the hands of the Defendants since he was convicted after a two-day jury trial. Defendants also note Swift's motion for a new criminal trial was denied on August 13, 2007 and his appeal to the Superior Court of Delaware was dismissed on July 1, 2008.

Defendants finally argue that pursuant to *Court of Common Pleas Civil Rule 12*, a motion to dismiss was filed in lieu of an Answer, which is permissible under the rules.

Discussion

The motion to reopen is treated for analytical purposes as a motion for reargument and/or motion for reconsideration under *Court of Common Pleas Civil Rule 59(e)*.⁴ The rule provides:

⁴ *Court of Common Pleas Civil Rule 59(e)* provides: "A motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision. The motion shall briefly and distinctly state the grounds therefore. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether

“A motion for reargument is the proper device for seeking reconsideration by the Trial Court of its findings of fact, conclusions of law or judgment...”⁵ However, “a motion for reargument is not a device for raising a new argument, and will be denied unless the Court has overlooked a controlling precedent or legal principle or the Court has misapprehended the law or facts such as would have changed the outcome of the Court’s decision.”⁶ A party seeking reargument must show the court misapprehended the law or facts in a manner that would change the outcome of its decision if it were correctly and/or fully informed.⁷ Analysis of these factors is within the sound discretion of the Court.⁸

In these proceedings, Swift merely restates the argument advanced at the February 4, 2010 hearing. The orders of the Court indicate the subpoena for Captain Mark Hitch was quashed after considering both party’s position. The Court concluded there was no valid subpoena issued for Pullin. Finally, Streets appeared for trial and his testimony was considered by the jury. While Swift may not like the decision of the jury, the proceeding indicates he had his date in Court before the trier-of-fact. There is no guarantee of a particular result, only that one receives a fair hearing with opportunity to present his or her witnesses as the Court

reargument will be granted. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the Judge involved.”

⁵ *Hessler v. Farrell*, Del. Supr., 260 A.2d 701 (1969)

⁶ *Beatty v. Smedley*, 2003 WL23353491, (Del. Supr.).

⁷ *Steadfast Ins. Co. v. Eon Labs MFG., Inc.*, 1999 Del. Supr. LEXIS 339, No. 98C-01-058-SCD, Del Pesco, J., 1999 WL 743982 (Aug. 18, 1999).

⁸ *Brown v. Wiler*, Del. Supr., 719 A.2d 489 (1988).

deems relevant. In reviewing the record, I find no basis to disturb the Court's previous ruling in this matter.

Additionally, pursuant to *Court of Common Pleas Civil Rule 59(e)*, a motion for reargument must be filed within 5 days after the Court's opinion or decision. In the present matter, the Court rendered its decision on Swift's initial motion to reopen on February 4, 2010. The motion before the Court was filed March 5, 2010, thirty (30) days after the Court's decision, therefore as such, it is time barred.

Accordingly, the motion for reargument is hereby **DENIED**.

SO ORDERED this 7th day of January 2011

The Honorable Alex J. Smalls
Chief Judge