

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

PAUL VANAMAN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 01C-01-026 (ESB)
	:	
RONNA M. COBB, JESSE COBB,	:	
TOWN OF GEORGETOWN, and	:	
PARKER ENTERPRISES,	:	
	:	
Defendants.	:	

ORDER

Date Submitted: December 19, 2002

Date Decided: January 3, 2003

Upon the Supreme Court's Order to the Superior Court to comply with the provisions of Superior Court Civil Rule 41(e), FINDINGS AND CONCLUSIONS.

Paul Vanaman, pro se;

Ronna M. Cobb and Jesse Cobb, pro se;

James A. Fuqua, Jr., Esquire, counsel for the Town of Georgetown; and

Parker Enterprises, pro se.

BRADLEY, J.

1. The Supreme Court, by an order dated October 28, 2002, remanded the above-captioned case to the Superior Court so that the Superior Court could comply with the provisions of Superior Court Civil Rule 41(e).

2. The Superior Court sent “Rule to Show Cause” notices to Plaintiff Paul Vanaman (“Vanaman”) on November 14, 2002, and December 4, 2002 (see Exhibits “A” and “B,” respectively). The Superior Court directed Vanaman to show cause, in writing, why his case should not be dismissed for (1) failing to diligently prosecute this matter in a timely matter; (2) failing to appear for a hearing scheduled for December 21, 2001; and (3) failing to appear for an office conference scheduled for February 20, 2002.

3. Vanaman filed his written response on December 19, 2002 (See Exhibit “C”).

4. The background of this matter is as follows:

(a) Vanaman filed his complaint for replevin on January 23, 2001.

(b) The Superior Court scheduled hearings to address the allegations raised in Vanaman’s complaint on March 2, 2001 and July 6, 2001. Both hearings were canceled because Vanaman had not completed service of process. Vanaman finally completed service of process on July 5, 2001.

(c) The Superior Court scheduled a third hearing for December 21, 2001. This hearing was canceled because Mr. Vanaman was ill.

(d) The Superior Court scheduled an office conference for February 20, 2002. Vanaman appeared approximately two hours after the scheduled time for the conference. The Superior Court, without following the provisions of Superior Court Civil Rule 41(e), dismissed

Vanaman's replevin complaint *sua sponte*.

5. This case, when dismissed by the Superior Court, had been pending for over a year and nothing, other than service of process, had been accomplished. Vanaman blames, in a very general manner, the long delay in this case on his illness and alleged errors by the Prothonotary and Sheriff.

6. Regarding service of process, it appears, based on notes in the file, that Vanaman had not filed a correct praecipe with the Superior Court when he filed his complaint. The Superior Court staff tried to reach Vanaman by phone, but was unable to do so. When Vanaman appeared at the Superior Court to check on the status of his case, he was made aware of the problem. Vanaman then submitted a revised praecipe and it went to the Sheriff's Office on or about May 16, 2001.

7. Vanaman missed the hearing on December 21, 2001 because he was ill.

8. Vanaman missed the office conference on February 20, 2002 because he thought it was at 3:00 p.m., instead of 1:00 p.m. The notice for the office conference clearly stated, in bold print, that it was to be held at 1:00 p.m.

9. The decision to dismiss a case pursuant to Rule 41(e) is within the discretion of the Superior Court. *Gebhart v. Ernest DiSabatino & Sons, Inc.*, 264 A.2d 157, 159 (Del. 1970). Having considered Vanaman's written explanations, I remain satisfied that this case should be dismissed. It took Vanaman nearly six months to obtain service on the defendants. There was nothing complicated about serving the defendants and it should not have taken so long. Two hearings had to be canceled as a result of Vanaman's delay. Vanaman missed the next two

scheduled events. I accept Mr. Vanaman's explanation that he was too ill to attend the hearing on December 21, 2001. While this explains Vanaman's absence, it is hardly comforting. If Vanaman's health is as serious as he claims, and I do believe that it is, then I have serious doubts about Vanaman being able to pursue this case diligently. There was no excuse for Vanaman missing the office conference scheduled for February 20, 2002. Vanaman's inability to follow the rules of the Superior Court, as evidenced by his inability to file a correct praecipe and to have it served in a timely manner¹, and Vanaman's inability to appear on time for scheduled events will likely result in more delays in this matter.

10. Each scheduled event that does not proceed as planned wastes the scarce resources of the Superior Court and needlessly costs the other parties time and money. Vanaman has demonstrated that he cannot pursue this case in a diligent manner.

E. Scott Bradley

¹Superior Court Civil Rule 4(j) sets forth a 120 day limit for service of process.