

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DAVID T. STEVENSON, R. CHRISTIAN : C.A. No. S13C-12-025 RFS
HUDSON, JOHN W. MOORE, AND :
JACK PETERMAN, :
 :
 Plaintiffs, :
 :
 v. :
 :
 DELAWARE DEPARTMENT OF :
NATURAL RESOURCES AND :
ENVIRONMENTAL CONTROL AND :
DAVID S. SMALL, IN HIS CAPACITY :
AS SECRETARY OF THE DEPARTMENT :
OF NATURAL RESOURCES AND :
ENVIRONMENTAL CONTROL, :
 :
 Defendants. :

OPINION

UPON PLAINTIFFS' MOTION TO REARGUE - DENIED

DATE SUBMITTED: April 21, 2016

DATE DECIDED: April 21, 2016

Richard L. Abbott, Esquire, 724 Yorklyn Road, Suite 240, Hockessin, DE 19707, attorney for Plaintiffs

Ralph K. Durstein, III, Esquire, 820 N. French Street, 6th Floor, Wilmington, DE 19801, and Valerie Satterfield Edge, Esquire, 102 W. Water Street, 3rd Floor, Dover, DE 19904, attorneys for Defendants

STOKES, J.

In a decision dated April 5, 2016, this Court denied plaintiffs' motion for summary judgment as well as their motion for a stay. On April 12, 2016, plaintiffs filed a motion to reargue pursuant to Superior Court Civil Rule 59(e). Defendants request that the Court deny the motion for reargument.

As explained in *Purnell v. Preferred Investment Services, Inc.*:¹

Superior Court Civil Rule 59(e) provides that a party may file a motion for reargument "within 5 days after the filing of the Court's opinion or decision." The standard for a Rule 59(e) motion is well defined under Delaware law. A motion for reargument will be denied unless the Court has overlooked precedent or legal principle that would have controlling effect, or misapprehended the law or the facts such as would affect the outcome of the decision. Motions for reargument should not be used merely to rehash the arguments already decided by the court, or to present new arguments not previously raised. Such tactics frustrate the efficient use of judicial resources, place the opposing party in an unfair position, and stymie "the orderly process of reaching closure on the issues." [Footnotes and citations omitted.]²

Plaintiffs' pending motion seeks to rehash arguments already decided.

Plaintiffs argue this Court failed to apply the appropriate standard when addressing the motion for a stay. When the Court reached its decision on plaintiffs' motion for a stay, it specifically refused to view the standing issue at the time the complaint was filed. Normally, parties seeking a review of regulations file a motion for a stay at the time of the filing of the complaint.³ For that reason, the standard for deciding a motion for a stay is based upon the

¹2014 WL 4495228 (Del. Super. Sept. 5, 2014).

²*Id.* at *1.

³29 *Del. C.* § 10144, which provides:

When an action is brought in the Court for review of an agency regulation or decision, enforcement of such regulation or decision by the agency **may** be stayed by the Court only if it finds, upon a preliminary hearing, that the issues and facts

preliminary pleading stage of matters. It is extremely unusual for plaintiffs to wait almost two years deep into the litigation and request a stay, as the plaintiffs did in this case. Plaintiffs want the Court to ignore the information which has been developed and which seriously calls into question whether plaintiffs will suffer any harm at all. The granting of a stay is discretionary. The Court exercised its discretion and denied the stay to avoid creating a grave injustice after considering the information before it. Plaintiffs' motion for reargument regarding the stay is DENIED.

Plaintiffs' arguments with regard to the denial of the motion for summary judgment repeat their arguments made during oral argument and in some of their briefing. In a nutshell, plaintiffs' basic argument is that this Court is not looking at the issues the way they want it to look at the issues and therefore, the Court's decision is wrong. That argument is one that plaintiffs can make before the Supreme Court on appeal. It is not an appropriate basis for reargument. Thus, the motion for reargument with regard to the Court's decision on summary judgment is DENIED.

In conclusion, plaintiffs' motion for reargument is denied.

IT IS SO ORDERED.

presented for review are substantial and the stay is required to prevent irreparable harm.