

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

Tera Robinson :
 :
 Plaintiff, :
 :
 v. : C.A. No. N12C-01-131 CHT
 :
 Jason R. Hawkes :
 :
 Defendant. :
 :

ORDER

This 1st day of August, 2013, it appears:

Before the Court is the Plaintiff's Motion for Reargument of the Court's May 31, 2013 Order granting the Defendant's motion to dismiss.

Generally, reargument will be denied unless the moving party can demonstrate that the Court "overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision."¹ A motion for reargument should not be used

¹ *Monsanto v. Aetna Cas. and Ins. Co.*, 1994 WL 46726, at *2 (Del. Super. 1994).

for "raising new arguments"² or to "rehash the arguments already decided by the Court."³

The Plaintiff's current motion fails to explain how the Court may have overlooked precedent or misapprehended the law. Rather, the Plaintiff argues issues already raised and rejected by the Court. Specifically, the Plaintiff argues that her neglect in securing service within the 120 days required by Superior Court Civil Rule 4(j) was excusable neglect. She argues that she made good faith efforts to locate the Defendant and secure service within the proscribed time period.

This is the same argument the Plaintiff made, and the Court rejected, in the original motion to dismiss. The Court did not misapprehend the law or the facts of this case. The facts, which the Plaintiff does not dispute, are as follows:

On January 19, 2012, the Plaintiff filed a complaint alleging negligence and personal injuries, a praecipe, and a summons. On February 28, 2012, the writ was

² *Cummings v. Jimmy's Grille, Inc.*, 2000 WL 1211167, at *2 (Del. Super. 2000) (citing *In re Murphy v. State Farm Ins. Co.*, 1997 WL 528252, at *1 (Del. Super. 1997)).

³ *McElroy v. Shell Petroleum*, 618 A.2d 91 (Del. 1992) (TABLE).

returned *non est* as to Defendant Hawkes. On May 14, 2012, the Plaintiff filed an alias praecipe and alias summons. On June 5, 2012, the Court issued a second writ directing that the process be served upon Mr. Hawkes. That second writ was returned *non est* on June 22, 2012. On December 4, 2012, the Plaintiff filed another alias praecipe and summons. On January 4, 2013, the Court issued a third writ. The Defendant was served with the complaint on January 9, 2013.

Rule 4(j) requires that a complaint be dismissed if it is not served within 120 days, unless good cause or excusable neglect is demonstrated as to the failure to do so. The first and second writs were returned *non est* on February 28, 2012 and June 22, 2012, 40 days and 154 days respectively from the date the complaint was filed. After the return of the second writ the Plaintiff should have notified the Court that she was unable to locate the Defendant's correct address and request an extension of the time limit in question. Instead, Ms. Robinson took no action in that regard for five months or until December 4, 2012 when she requested the issuance of the third writ. At that point, 327 days had passed since the

complaint was filed. She offered no reason or excuse for her failure to take some action in that regard for five months. The Court did not find excusable neglect in the original motion, and likewise does not find excusable neglect in the instant motion.

The Plaintiff has not demonstrated the Court missapprehended the law or facts of this case. There is no basis upon which the Court could or should review its earlier Order.

For the foregoing reasons, the Plaintiff's motion for reargument of the motion to dismiss must be, and hereby is, **denied**.

IT IS SO ORDERED.

/S/CHARLES H. TOLIVER, IV

TOLIVER, JUDGE