

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

ARCHIE SIMMONS

Plaintiff-Below/Appellant,

v.

RAQUEL MATEO,
LUIS OPPENHEIMER,

Defendants-Below/Appellee.

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C.A. No.: CPU4-13-000292

Submitted: December 20, 2013

Decided: January 13, 2014

**On Plaintiff-Below/Appellant's Motion for Reargument
DENIED**

Archie Simmons
2404 Pyles Ford Road
Greenville, DE 19807
Self-represented
Plaintiff-Below/Appellant

Andres Gutierrez de Cos, Esquire
704 N. King Street
Wilmington, DE 19801
Attorney for
Defendant-Below/Appellee

ORDER

Plaintiff-Below/Appellant Archie Simmons ("Simmons") brings this Motion for Reargument of the Court's decision rendered July 5, 2013, dismissing Simmons' appeal. A hearing on the motion was held on November 25, 2013, and the Court heard oral argument from both parties. At the conclusion of the hearing, the Court reserved decision, and ordered supplemental briefing. This is the Court's Final Decision and Order.

Facts & Relevant Procedural History

Simmons brought this appeal from the Justice of the Peace Court on January 24, 2013. On March 19, 2013, Defendant-Below/Appellee Luis Oppenheimer (“Oppenheimer”) filed a motion to require Simmons to obtain counsel, on the grounds that Simmons, *pro se*, was acting on behalf of corporation, Star Property Management, LLC. On April 8, 2013, Kevin William Gibson, Esq., served Oppenheimer’s counsel with his entry of appearance on behalf of Simmons.¹

On April 8, 2013, the Court held a hearing on the Motion to Obtain Counsel. The Court determined that Star Property Management, LLC, was not a party to the present action, nor was it a party to the related action in the Justice of the Peace Court. Accordingly, Simmons was representing only himself, not a corporation and, as such, he was not required to be represented by an attorney. Oppenheimer’s motion to obtain counsel was denied.

On April 8, 2013, Oppenheimer filed a motion to dismiss the appeal. A hearing on the motion was held on April 26, 2013. Simmons failed to appear at the hearing. On May 28, 2013, the Court entered an order requiring Simmons to file a response to the Motion to Dismiss within 15 days, admonishing that failure to do so would result in a dismissal of the appeal. On July 5, 2013, having received no response from Simmons, the Court entered an order dismissing the appeal.

On August 6, 2013, Simmons filed this Motion for Reargument, requesting that the Court

¹ Mr. Gibson’s entry of appearance was docketed by the Clerk of the Court on April 11, 2013; however, the certificate of service signed by Mr. Gibson was dated April 8, 2013.

reconsider its July 5, 2013 order dismissing the appeal.² A hearing on the motion was held on November 25, 2013.

At the hearing, Simmons argued that he never received notice of the Motion to Dismiss, nor did he receive the Court's May 28th order. Mr. Gibson was present at the hearing. He explained to the Court that within a week of entering his appearance, the Court ordered that Simmons need not be represented by an attorney. Mr. Gibson said that he did not formally withdraw as counsel because, based on that order, he was of the understanding that he did not need to appear. Counsel for Oppenheimer presented oral argument in opposition of the motion, and made a request for attorney's fees. At the conclusion of the hearing, the Court reserved decision and ordered supplemental briefing from the parties.

On December 6, 2013, Simmons filed a document captioned "Response to Motion to Dismiss Appeal and Countermotion."³ In his response, Simmons requests relief from judgment pursuant to *Court of Common Pleas Civil Rule* 60, on the basis of clerical error and excusable neglect. Simmons argues, *inter alia*, that he did not receive the Court's May 28, 2013 order to respond to Oppenheimer's Motion to Dismiss and, furthermore, the order does not specify which motion to dismiss required a response.⁴ Simmons also contends that he is entitled to relief under *CCP Civ. R.* 61. Simmons argues that refusal to grant his appeal would be "inconsistent with substantial justice."

² Simmons captioned the filing as a "Motion for Reconsideration of the Courts order of July 5, 2013," however, a motion for reargument is the proper devise for reconsideration of the Court's decision, and the Court will address Simmons' motion as such.

³ Simmons also filed a document titled "Response to Motion to Affirm." This filing is not pertinent to the present motion for reargument and shall not be addressed herein.

⁴ Simmons claims that the Court did not issue a decision on a motion to dismiss filed by Oppenheimer on March 5, 2013. However, the docket reflects that Oppenheimer's March 5th motion was withdrawn on March 15, 2013. The only outstanding motion to dismiss, and therefore the only one warranting a response, was the motion filed by Oppenheimer on April 8, 2013.

Discussion

Motions for Reargument are governed by *Court of Common Pleas Civil Rule 59(e)*, which 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 therefor. 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 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.

The Court does not have discretion to extend the filing period for a motion for reargument.⁵ "The reargument period cannot be enlarged."⁶ A motion for reargument will be denied "unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."⁷

Simmons filed the motion for reargument over a month after the filing of the Court's July 5, 2013, order dismissing the appeal. Rule 59(e) requires that motions for reargument be filed within five days of the Court's opinion or decision.⁸ Thus, Simmons' motion for reargument is untimely and must be denied.

Even if Simmons' motion was filed in accordance with the procedural requirements of Rule 59(e), Simmons' motion for reargument fails substantively. Simmons does not suggest that the Court overlooked any controlling legal principles, or that it misapprehended the law or facts. Instead, Simmons argues that his motion should be granted on grounds of excusable neglect and

⁵ *Strong v. Wells Fargo Bank*, 2013 WL 1228028, at *1 (Del. Super. Jan. 3, 2013).

⁶ *McDaniel v. DaimlerChrysler Corp.*, 860 A.2d 321,

⁷ *Board of Managers of the Delaware Criminal Justice Information System v. Gannett Co.*, 2003 WL 1579170, at *1 (Del. Super. Jan. 17, 2003).

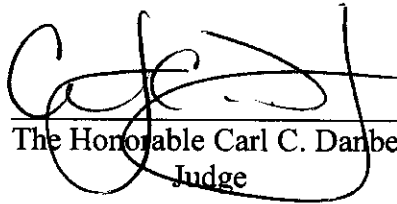
⁸ CCP Civ. R. 59(e).

“substantial justice.” None of the arguments set forth by Simmons are a basis for reargument under Rule 59(e).

Conclusion

For the foregoing reasons, it is hereby ORDERED that Simmons’ Motion for Reargument is **DENIED**.

IT IS SO ORDERED this 13th day of January, 2014.


The Honorable Carl C. Danberg,
Judge

cc: Tamu White, Civil Case Manager/Supervisor