

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

JAMES M. CULLEN, III,)
) C.A. No. K10C-05-008 JTV
Plaintiff,)
)
v.)
)
MARK E. DUDLEY, and FARM)
FAMILY CASUALTY INSURANCE))
COMPANY,)
)
Defendant.)

MARK E. DUDLEY,)
) THIRD-PARTY COMPLAINT
Plaintiff,) and
) COMPLAINT FOR
v.) DECLARATORY JUDGMENT
) PURSUANT TO 10 *Del. C.*
) CHAPTER 65
FARM FAMILY CASUALTY)
INSURANCE COMPANY,)
)
Defendant.)

Submitted: February 15, 2013
Decided: May 29, 2013

Scott E. Chambers, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiff Cullen.

Scott L. Silar, Esq, Margolis Edelstein, Wilmington, Delaware. Attorney for Defendant Dudley.

Mary E. Sherlock, Esq., Weber, Gallagher, Simpson, Stapleton, Fires & Newby, Dover, Delaware. Attorney for Defendant Farm Family.

Upon Plaintiff's Motion for Reargument

DENIED

VAUGHN, President Judge

ORDER

Upon consideration of the third-party plaintiff's Motion for Reargument, the third-party defendant's opposition, and the record of the case, it appears that:

1. The third-party plaintiff, Mark Dudley, moves to reargue this Court's decision dated January 29, 2013 awarding declaratory judgment in favor of the third-party defendant, Farm Family Casualty Insurance Company. In that opinion, the Court held that Dudley was not an "insured" under his grandparents' umbrella insurance policy issued by Farm Family, because he was not a resident of the grandparents' household. In coming to that conclusion, the Court determined that the term "household" was unambiguous, and that it meant "those who dwell under the same roof and compose a family."

2. In applying that definition to the facts of the case, the Court held that Dudley was not a resident of the grandparents' household, because they did not live under the same roof—rather, Dudley lived in a separate apartment above a detached garage located twenty feet away from the main house where the grandparents lived. The Court noted that it was "aware that there is authority that persons do not have to reside under the same roof to be members of the same household," and specifically

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cited the New Jersey Supreme Court case of *Mazzilli v. Accident & Casualty Insurance Company of Winterthur, Switzerland*¹ for that proposition. However, the Court concluded that it was “persuaded that the conclusion that Dudley and his grandparents did not live in the same household is the proper conclusion in this case.”

3. In his motion for reargument, Dudley simply contends that “[t]his Court should have applied the holding in the *Mazilli* case to the instant case because the facts are more similar to this case than any Delaware holdings.” Farm Family opposes Dudley’s motion and contends that the facts of *Mazzilli* are distinguishable, and that the Court used the proper definition of “household,” which was originally defined in this Court’s decision in *Engerbretsen v. Engerbretsen*.²

4. The standard for a Rule 59(e) motion for reargument is well-settled. The purpose of reargument is to permit reconsideration of findings of fact, conclusions, of law, or judgment of law.³ Reargument usually will be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it misapprehended the law or the facts in a manner affecting the outcome of the decision.⁴ A motion for reargument should not be used merely to rehash the arguments already decided by the court.⁵

¹ 170 A.2d 800 (N.J. 1961).

² 675 A.2d 13 (Del Super. 1995).

³ *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

⁴ *Simpson v. Coleman*, 2012 WL 1415714, at *1 (Del. Super. Feb 23, 2012).

⁵ *McKay v. St. Francis Hosp., Inc.*, 2008 WL 4947652, at 1 (Del. Super. Nov. 18, 2008).

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5. Here, Dudley asks this Court to reconsider its decision based on the *Mazzilli* case. As mentioned, however, the Court already expressly considered, and declined to follow, *Mazzilli*. Although similar to the facts presented in this case, *Mazzilli* is a New Jersey Supreme Court case, which has no binding effect on this Court. Accordingly, Dudley has not demonstrated that “the Court overlooked a precedent or legal principle that would have a *controlling effect*, or that it misapprehended the law or the facts in a manner affecting the outcome of the decision.” The Court is still of the opinion that Dudley was not a resident of the grandparents’ household based on the unambiguous meaning of the term “household,” and the Court still declines to follow the *Mazzilli* case.

6. For the foregoing reasons, Dudley’s motion for reargument is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File