

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

ANITA G. MCCRAY,)
)
 Plaintiff,)
)
 v.)
)
 THE ELIZABETH HOUSE FAMILY)
 LIFE CENTER, INC., and)
 MAURICE BUTLER, individually,)
)
 Defendants.)

C.A. No. CPU4-14-000151

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ORDER GRANTING PLAINTIFF'S MOTION FOR REARGUMENT
PURSUANT TO C.C.P. CIVIL RULE 59(e)

On May 5, 2014, this Court issued an Opinion granting Defendants' Motion to Dismiss, finding *inter alia* that Plaintiff failed to file a timely notice of appeal pursuant to 10 *Del.C.* §9570 *et seq.* to this Court.

WHEREAS on June 13, 2014, counsel for Plaintiff filed a Motion for Reargument pursuant to *C.C.P. Civil Rule 59(e)* ("the Motion"), asserting that the instant appeal was, in fact, timely filed with the Court's e-Flex system on January 7, 2014, the last date upon which the appeal could be timely filed;

WHEREAS a Motion for Re-Argument is limited to "[r]econsideration by the trial court of its findings of fact, conclusions of law, or judgment."¹ "A Motion for Re-argument is granted only if '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.'"² "A party seeking

¹ *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

² *State Farm Fire & Cas. Co. v. Middleby Corp.*, 2011 WL 2462661, at *2 (Del. Super. June 15, 2011). (quoting *Kennedy v. Invacare Corp.*, 2006 WL 488590, at *1 (Del. Super. Jan. 31, 2006)).

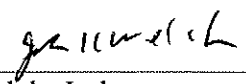
to have the trial court reconsider [an] earlier ruling must demonstrate newly discovered evidence, a change in the law or manifest injustice,”³

WHEREAS this Court, after reconsideration of Exhibit A attached to Plaintiff’s Motion for Reargument, has determined that the document is case dispositive on the pending legal issue before the Court, and that no further legal argument is necessary, as the document clearly indicates the Praecipe on appeal was, in fact, timely filed January 7, 2014 with the Court of Common Pleas; within the statutory fifteen (15) day period set forth in 10 *Del.C. §9570 et seq.*

The Court notes counsel of record has filed lengthy memoranda, presented arguments and filed exhibits on the record other than Exhibit “A”. That documents name is listed as “Appeal of the JP Case (Statutory Fees involved) and Praecipe was filed 1-7-14 “pdf”. This document is dispositive and clearly indicates the appeal to this Court was timely filed on January 7, 2014, the last date set forth in 10 *Del.C. §9570 et seq.* to be timely filed.

The Court notes it has fully considered the legal arguments set forth in Defendant’s Memoranda of Law filed June 20, 2014. However, Exhibit “A”, after reviewing the record indicates the appeal was, in fact, timely appealed. 10 *Del.C. §9570 et seq.*

IT IS HEREBY ORDERED this 1st day of July, 2014, that Plaintiff’s Motion for Reargument is hereby **GRANTED**. The Motion to Dismiss is Vacated. The parties, through counsel, shall contact the Civil Clerk at their earliest convenience to set a Scheduling Order and to set this matter for trial.

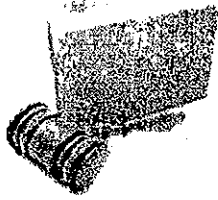


John K. Welch, Judge

/jb
Encl.

cc: Ms. Tamu White, CCP Civil Case Manager

³ *Parisan v. Cohan*, 2012 WL 1066506, at *1 (Del. Com. Pl. Mar. 29, 2012).



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Status: Awaiting Approval 01-08-2014:03:22:38 PM ✓

Filer Interface ID: 751931

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Submitted By: Crosse, Kester I.H.

Date Submitted: 01-08-2014:03:22:16 PM

Case Title:

Case Number:

Case Type: JP APPEAL FILED WITH FEES

Court Location: CCP - NEW CASTLE

Note: This filing will be removed from ECF on 03-09-2014

Document Name	View Document
APPEAL OF JP CASE (STATUTORY FEES INVOLVED) PRAECIPE	PRAECIPE - MCCRAY 1-7-14.pdf ✓
- ATTACHMENT TO FILING EXHIBIT A	EXHIBIT A - MCCRAY 1-7-14.pdf ✓
- ATTACHMENT TO FILING NOTICE OF APPEAL	NOTICE OF APPEAL - MCCRAY 1-7-14.pdf ✓
- ATTACHMENT TO FILING COMPLAINT	COMPLAINT - MCCRAY 1-7-14.pdf ✓
INITIAL SUMMONS: SERVICE BY SHERIFF	SUMMONS ON APPEAL - MCCRAY 1-7-14.pdf ✓
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Crosse, Kester I.H.	Signed	01-08-2014:03:22:16 PM

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