

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

January 5, 2006

Raphael F. Nevins
P.O. Box 1348
Las Cruces, New Mexico 88004

Michael R. Ippoliti, Esquire
P.O. Box 2284
Wilmington, DE 19899

RE: Nevins v. Bryan, et al., C.A. No. 05C-07-041

DATE SUBMITTED: November 9, 2005

Dear Mr. Nevins and Mr. Ippoliti:

Pending before the Court is a motion to reargue this Court's decision filed September 8, 2005, wherein it denied the motion of plaintiff Raphael F. Nevins ("plaintiff") to proceed in forma pauperis and dismissed the complaint. For the reasons set forth below, the motion to reargue is denied.

On July 29, 2005, plaintiff filed a complaint alleging malicious prosecution against the named defendants. He also filed a motion to proceed in forma pauperis. In its September 8, 2005, decision, the Court denied the motion to proceed in forma pauperis because plaintiff did not

submit all of the information required to be submitted in connection with such a motion. Nevins v. Bryan, Del. Super., C.A. No. 05C-07-041, Bradley, J. (Sept. 8, 2005). The Court did not allow plaintiff the opportunity to supplement his filing; it decided such a submission would be fruitless because a review of the complaint led the Court to conclude the complaint required dismissal. Id. I reference the parties to that decision rather than set forth the findings and conclusions therein. The Court determined plaintiff had not stated a claim for malicious prosecution and dismissed the complaint. Id.

On September 8, 2005, the Court mailed a copy of this decision to plaintiff at his address of record. It also sent the defendants copies of the decision, stating in its cover letter: “By so doing, I am not in any way asserting jurisdiction over them. However, I feel it is appropriate that they be made aware that the suit was filed in this Court and was dismissed.”

On September 19, 2005, plaintiff faxed this Court a request for an extension to file a motion for reargument pursuant to Superior Court Civil Rule 59(e).¹ The Court granted that request.

On September 29, 2005, plaintiff filed his motion to reargue. He argues that the Court incorrectly concluded that the New Mexico Department of Labor (“NMDOL”) Administrative

¹Superior Court Civil Rule 59(e) provides:

Rearguments. 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.

Law Judge (“ALJ”) did not make any findings that plaintiff was not guilty of any misappropriation of funds. Instead, he argues, the NMDOL ALJ did make such a finding. Accordingly, he asks that the Court reconsider its decision and allow the complaint to proceed.

Without waiving jurisdictional issues, defendants have submitted arguments as to why the motion to reargue should not be granted. Plaintiff submitted a response thereto, despite the fact that he was not entitled to file such. Superior Court Civil Rule 59(e).

The standard to be applied to a motion to reargue is set forth in Gass v. Truax, Del. Super., C.A. No. 98C-12-153, Jurden, J. (June 28, 2002) at 4:

When determining a motion for reargument under Rule 59, the Court must consider whether it “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.” n9

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n9 Monsanto Company v. Aetna Casualty and Surety Company, 1994 WL 46726, at *2 (Del. Super.) (citations omitted), aff’d, 653 A.2d 305 (Del. 1994).

-----End Footnote-----

In this case, plaintiff argues the Court misapprehended the law and/or the facts regarding the NMDOL ALJ’s decision. With respect to that decision, the Court found as follows:

Plaintiff filed his claim for unemployment compensation with the NMDOL in 2001. The employer decided not to participate in a hearing on the claim which was held July 2, 2002. The Administrative Law Judge (“ALJ”) noted that the employer has the burden of establishing that the plaintiff should be disqualified from receiving benefits. Because the employer chose not to appear to offer evidence, the ALJ ruled that the discharge was not for reasons constituting misconduct and plaintiff could receive benefits. It is clear the ruling was based upon the employer’s lack of participation in the proceedings, and not upon findings made after a presentation of facts regarding specific allegations of misappropriation of corporate assets, corporate waste or fraud.

Nevins v. Bryan, supra at 3-4.

This lead the Court to conclude at pages 6-7 of its opinion:

A review of the ALJ decision evidences that the NMDOL ALJ did not make any findings that plaintiff was not guilty of any misappropriation of funds. Thus, plaintiff's assertion that defendants made false assertions with regard to the NMDOL proceedings are not valid and accordingly fail to support plaintiff's contention that defendants lacked probable cause to make these assertions or made them with malice.

The Court did not misapprehend the facts or the law. It concluded that a failure to participate in unemployment proceedings did not support plaintiff's contention defendants lacked probable cause to assert counterclaims in the Chancery Court action for breach of fiduciary duty by misappropriation of corporate assets, waste of corporate assets or fraud on the corporation or that they made the counterclaims maliciously. Plaintiff has not provided a valid basis for reargument. Accordingly, I deny the motion to reargue.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office