

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

SPEEDY KEY LOCK & TOW SERVICE)
and DOUGLAS COUDEN,)
)
Defendants-Below/Appellants,)
)
v.)
)
AMERICAN SPIRIT FEDERAL)
CREDIT UNION,)
)
Plaintiff-Below/Appellee.)
)

C.A. No. CPU4-14-002869

Submitted: April 1, 2015
Decided: May 1, 2015

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ORDER

Defendants-Below/Appellants Speedy Key Lock & Tow Service (“Speedy Key”) and Douglas Couden (“Mr. Couden”) (collectively, “Appellants”) bring this Motion for Reargument pursuant to *Court of Common Pleas Civil Rule 59(e)*. Appellants seek to reargue this Court’s Order of March 27, 2015, which reversed the Justice of the Peace Court’s decision to deny Appellants’ motion to vacate, and remanded the case. This is the Court’s final decision and Order.

FACTS AND RELEVANT PROCEDURAL POSTURE

On October 9, 2014, Appellants filed a notice of appeal, seeking review of the Justice of the Peace Court's denial of its motion to vacate default judgment entered for Appellee.

On March 27, 2015, the Court entered an Order reversing the Justice of the Peace Court's decision and remanding the case for further proceedings. The Court found the Justice of the Peace Court only considered Mr. Couden's improper filing of the Civil Form 50 when rendering its decision. In considering Mr. Couden's conduct, this Court found that the improper filing of the Civil Form 50 constituted excusable neglect, and that the Justice of the Peace Court's decision to deny Appellants' motion to vacate was arbitrary and capricious. The Court reasoned:

In reviewing the record, and the Justice of the Peace Court's denial of Appellants' motion to vacate, it is clear that the judgment was capricious and arbitrary. While the court cited to the applicable standard of law [under Justice of the Peace Civil Rule 60(b)], it failed to apply that standard to the facts of the case. The court failed to consider the fact that Mr. Couden twice appeared for trial, prepared to defend; twice submitted the Civil Form 50 (granted, only once properly executed); and claimed that he had submitted the Civil Form 50 to the Chief Magistrate as required. These facts demonstrate diligence. Instead, the court focused its analysis on a discrepancy in Mr. Couden's statements from June 9, 2014, when the trial was continued. This does not reflect a judgment that was based upon conscience and reason.¹

On April 1, 2015, Appellee timely filed the present motion for reargument. Appellee argues, *inter alia*, that the Justice of the Peace Court entered default judgment against Appellants not only for failing to properly file a Civil Form 50, but also for failing to properly file an Answer. Appellee admits that the Justice of the Peace Court "did not clearly articulate this additional reason for denying the Motion to Vacate," but argues that "it is clear in the language used in the final paragraph of the 9/24/2014 Order that [Appellants'] failure to file a Form 50

¹ *Speedy Key Lock & Tow Service and Douglas Couden v. American Spirit Federal Credit Union*, C.A.No. CPU4-14-002869 at 6-7 (Del. Com. Pl. March 27, 2015) (ORDER).

was not the only reason for the entry of default judgment.”² Appellee argues that Appellants’ failure to timely file an Answer was sufficient for entry of default judgment, and does not constitute excusable neglect. Ultimately, Appellee requests this Court to reconsider its holdings in its March 27, 2015 Order since the Court did not address whether Appellants’ failure to timely file an Answer constituted excusable neglect.

Appellants oppose Appellee’s motion for reargument, and claim that Appellee’s motion does not satisfy the legal standards under *Court of Common Pleas Civil Rule 59(e)*. Appellants argue that the Court’s March 27, 2015 Order clearly reads the Justice of the Peace Court’s Order as basing its deciding on Appellants’ failure to properly file a Civil Form 50 and not on any failure to properly file an answer. Appellants also claim that the motion includes a rehash of Appellee’s previous argument and presents a new argument on how the Court should interpret the Justice of the Peace Court’s Order, both of which should not be considered. Appellants request that the Court deny the present motion

DISCUSSION

Court of Common Pleas Civil Rule 59(e) governs motions for reargument, 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.

² Appellee’s Motion for Reargument, ¶ 16.

This Court has previously held that “[a] motion for reargument is not a chance for a party to reiterate arguments already decided by the Court.”³ Instead, “[a] party seeking reargument must show that the court misapprehended the law or the facts in a manner that would change the outcome of its decision if it were correctly and/or fully informed.”⁴ A motion for reargument will be denied when it “relies upon grounds not raised in the original proceedings or when it merely advances the same matters that were already raised in the original proceeding.”⁵

In this case, the basis for Appellee’s motion does not address the merits upon which the decision below was vacated. Appellee suggests that the Court has made a misapplication of fact with respect to the procedural posture of this matter. The Court notes that in its March 27, 2015 Order, it included a misstatement regarding the time in which Appellants were to file a counterclaim in the Justice of the Peace Court. After reviewing previous drafts of the Order, the Court found that there was a footnote that was inadvertently omitted in its final draft. Therefore, the Court is simultaneously issuing a revised Order to remedy this issue.

Appellee suggests that the Court has made a misapplication of fact with respect to the reading of the Justice of the Peace Court Order. Appellee highlights two sentences from the Justice of the Peace Court’s September 24, 2014 Order: “The answer/counterclaim were not considered by the Court. The end result still would be judgment for the Plaintiff.”⁶ Appellee claims that a proper reading of these sentences would be the following: “Even if Defendants had filed a proper Form 50, the end result still would be judgment for Plaintiff.”⁷ The Court however, does not agree with Appellee’s reading; when reading these two sentences in context,

³ *Tektree, LLC v. Borla Performance Indus., Inc.*, 2013 WL 5508761, at *1 (Del. Com. Pl. Oct. 2, 2013).

⁴ *Umphenour v. O'Connor*, 2011 WL 2671916, at *1 (Del. Com. Pl. July 1, 2011) (citing *Steadfast Ins. Co. v. Eon Labs MFG., Inc.*, 1999 WL 743982 (Del. Super. Aug. 18, 1999)).

⁵ *Id.*

⁶ *American Spirit Fed. Credit Union v. Speedy Key Lock and Tow Service*, C. A. No. JP13-14-004944 (Del. J.P. Sept. 24, 2014) (ORDER).

⁷ Appellee’s Motion for Reargument, ¶ 13.

the Court interprets these two sentences to mean that even if the Justice of the Peace Court did consider the answer and counterclaim deficiencies, the end result would still be judgment for Appellee because of the Civil Form 50 deficiency.

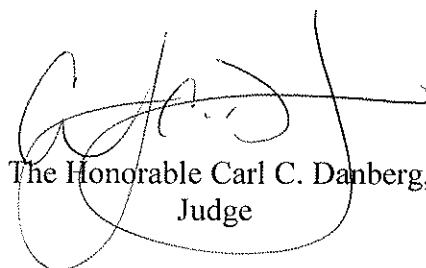
In the March 27, 2015 Order, this Court based its decision by analyzing the Justice of the Peace Court's reasoning for denying Appellants' motion to vacate. Footnote 5 of the Order states, "[a]lthough the Justice of the Peace Court decision mentions that Appellants' answer and counterclaim were incomplete because they were not signed, based on the court's analysis in its order, it appears that the court only considered Appellants' improper Civil Form 50 filing as the basis for the entry of default judgment."⁸ Therefore, Appellee's motion for reargument fails because it does not address the merits upon which the decision below was vacated.

CONCLUSION

For the foregoing reasons, Appellee's motion for reargument is **DENIED** and the matter is remanded for further proceedings.

IT IS HEREBY ORDERED that the supersedeas bond Appellants posted in the amount of \$3,095.00 be returned to Appellant Douglas Couden through his Counsel.

IT IS SO ORDERED.



The Honorable Carl C. Danberg,
Judge

cc: Tamu White, Judicial Case Management Supervisor

⁸ Speedy Key Lock and Tow Service v. American Spirit Fed. Credit Union, C. A. No. CPU4-14-002869, at (Del. Com. Pl. Mar. 27, 2015) (ORDER).