

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

BRUCE WOOD,)	
Plaintiff,)	
v.)	C.A. No. N14C-04-264 ALR
)	
BRIAN COLLISON &)	Jury Trial Demanded
DEPARTMENT OF CORRECTION,)	
Defendants.)	

**Upon Plaintiff's Motion for Reconsideration of
Plaintiff's Motion for Appointment of Counsel — *DENIED***

Submitted: October 30, 2014; December 3, 2014
Decided: December 12, 2014

Upon Plaintiff's Motion for Reconsideration of Plaintiff's Writ of Mandamus — *DENIED*

Submitted: August 11, 2014; December 3, 2014
Decided: December 12, 2014

**Upon Plaintiff's Motion for Reconsideration of
Plaintiff's Motion for an Emergency Injunction — *DENIED***

Submitted: December 3, 2014
Decided: December 12, 2014

Upon Plaintiff's Second Motion to Amend the Complaint — *DENIED*

Submitted: December 3, 2014
Decided: December 12, 2014

Upon Plaintiff's Motion for Enlargement of Time for Discovery — *DENIED*

Submitted: December 3, 2014
Decided: December 12, 2014

**Upon Plaintiff's Motion to Amend the
Trial Scheduling Order — *DENIED in part; GRANTED in part***

Submitted: December 3, 2014
Decided: December 12, 2014

Upon Plaintiff's Request for Court Rules and Procedures — *DENIED*

Submitted: October 21, 2014
Decided: December 12, 2014

Upon Defendants' Motion to Dismiss — *DENIED*

Submitted: December 8, 2014
Decided: December 12, 2014

Plaintiff Bruce Wood filed a complaint against the Department of Correction and Corrections Officer Brian Collison. The Court permitted Plaintiff to proceed *in forma pauperis*.¹ Defendants have been served and have filed answers. The case is scheduled for trial on March 2, 2015.

Plaintiff has been a prolific litigant since the inception of this case. Over the last eight months, Plaintiff has filed an abundance of motions, requests, and letters with the Court. Most recently, Plaintiff has filed: (1) a third and fourth motion for appointment of counsel; (2) a second and third writ of mandamus; (3) a second motion for an emergency injunction; (4) a second motion to amend the complaint; and (5) a request for instructions regarding Court rules and procedures. Additionally, Plaintiff has filed a motion for enlargement of time for discovery or, alternatively, a motion to amend the trial scheduling Order.

I. Plaintiff's Motions for Reconsideration

Plaintiff's recent motions for appointment of counsel, motion for an injunction, and writ of mandamus are repetitive in nature and attempt to reargue issues previously decided by the Court. Accordingly, the Court construes Plaintiff's duplicative motions as motions for reconsideration.²

¹ 10 *Del. C.* § 8802.

² Super. Ct. Civ. R. 59(e); *Wilm. Trust Co. v. Thielemann*, 2002 WL 31845923, at *1 (Del. Super. Dec. 17, 2002); *Duffy v. Kent Cnty. Levy Ct.*, 800 F. Supp.2d 624, 657 (D. Del. 2011).

The standard of review for a motion for reconsideration is well established. The Court will grant a motion for reconsideration 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.”³ A motion for reconsideration is not an opportunity for a party to rehash arguments already decided by the Court.⁴

A. Reconsideration of Plaintiff’s Motions for Appointment of Counsel

Plaintiff filed his first motion for appointment of counsel on May 21, 2014. That same day, the Court issued an Order denying Plaintiff’s motion. On August 27, 2014, Plaintiff filed his second motion for counsel, repeating the same grounds for relief provided in Plaintiff’s first motion for counsel. By Order dated September 18, 2014, the Court denied Plaintiff’s second motion for counsel and explained why appointment of counsel was neither necessary nor appropriate.⁵ Nonetheless, Plaintiff filed his third motion for counsel on October 30, 2014. Additionally, while Plaintiff’s third motion for counsel remained under the advisement of the Court, Plaintiff filed his fourth motion for counsel.

The Court has reviewed and considered Plaintiff’s third and fourth motions for counsel. Plaintiff’s third and fourth motions for appointment of counsel repeat

³ *Bd. of Managers of Del. Crim. Justice Info. Sys. v. Gannett Co.*, 2003 WL 1579170 , at *1 (Del. Super. Jan. 17, 2003).

⁴ *Id.*; *Kennedy v. Invacare Corp.*, 2006 WL 488590, at *1 (Del. Super. Jan. 31, 2006).

⁵ *Wood v. Collison*, 2014 WL 4653153, at *1 (Del. Super. Sept. 18, 2014).

the same grounds for relief presented in Plaintiff's first two motions for counsel, and therefore, the Court construes Plaintiff's requests as a motion for reconsideration. Plaintiff's motions do not assert that the Court overlooked a controlling precedent or legal principle or misapprehended the law or facts such as would have changed the outcome of the Court's first and second decisions on the issue. Accordingly, Plaintiff's motion for reconsideration of Plaintiff's motions for counsel is hereby denied.

B. Reconsideration of Plaintiff's Writ of Mandamus

On May 21, 2014, Plaintiff filed a writ of mandamus requesting the Court order Plaintiff's transfer to a different housing unit during the litigation of this case to avoid being subject to alleged acts of harassment and retaliation by Defendants. The Court denied Plaintiff's writ that same day. That same week, Plaintiff filed a motion for an Order for Defendant Department of Correction to cease and desist all alleged retaliatory acts against Plaintiff during these proceedings. Plaintiff's cease and desist motion reiterated the same grounds for relief as Plaintiff's first writ of mandamus. Accordingly, the Court denied Plaintiff's cease and desist motion. However, on August 11, 2014, Plaintiff filed his second writ of mandamus. Plaintiff again asserted repetitive grounds for relief.⁶ On December 3, 2014, while

⁶ Plaintiff originally filed his second writ as an attachment to Plaintiff's motion for an emergency injunction on July 1, 2014. However, due to the unusual placement, the writ was not placed on the Court's docket. Plaintiff resubmitted the writ on August 11, 2014.

Plaintiff's second writ remained under advisement with the Court, Plaintiff filed his third, repetitive writ.⁷

The Court construes Plaintiff's duplicative writs as motions for reconsideration. Plaintiff's second and third writs do not assert that the Court overlooked a controlling precedent or legal principle or misapprehended the law or facts such as would have changed the outcome of the Court's earlier decisions on the issue. Accordingly, Plaintiff's motions for reconsideration of Plaintiff's writ of mandamus is hereby denied.

C. Reconsideration of Plaintiff's Motion for an Emergency Injunction

In addition to filing multiple writs, Plaintiff has filed two motions for emergency injunctions. Plaintiff filed his first motion for an emergency injunction on July 1, 2014. Plaintiff alleged that Defendants were engaging in a "campaign of retaliation" against Plaintiff for instituting the instant case. The Court denied Plaintiff's motion in a detailed Order dated July 22, 2014. On December 3, 2014, Plaintiff filed a second motion for an emergency injunction alleging that Defendants continue to retaliate against Plaintiff for pursuing this matter.

The Court construes Plaintiff's second motion for an emergency injunction as a motion for reconsideration because Plaintiff's motion reiterates previously asserted circumstances in support of relief. Plaintiff's most recent motion merely

⁷ Plaintiff filed his third writ as an alternative to his second motion for an injunction.

adds the sentiment that granting the relief requested will protect Plaintiff's safety and is "in the interest of justice." However, Plaintiff's motion does not assert that the Court overlooked a controlling precedent or legal principle or misapprehended the law or facts such as would have changed the outcome of the Court's earlier decisions on the issue. Accordingly, Plaintiff's motion for reconsideration of Plaintiff's motion for an emergency injunction is hereby denied.

II. Plaintiff's Second Motion to Amend the Complaint

On July 17, 2014, Plaintiff filed a motion to amend the complaint to include additional claims of harassment and retaliation. The Court granted the motion over Defendants' opposition. The Court's Order allowed Plaintiff twenty (20) days to file the amended complaint and specifically stated that the Court's decision "should not be understood by Plaintiff to mean that further amendment will be permitted."⁸

Thereafter, Plaintiff did not file an amended complaint within twenty (20) days. Instead, Plaintiff filed a motion for an extension of time to amend, which the Court denied by Order dated September 18, 2014. Nonetheless, Plaintiff filed an amended complaint on October 1, 2014.⁹ The Court rejected Plaintiff's amended

⁸ *Wood v. Collison*, No. N14C-04-264, at 2 (Del. Super. Aug. 13, 2014) (ORDER).

⁹ Plaintiff had filed an amended complaint on September 11, 2014 but was promptly notified that his documents were non-conforming.

complaint as untimely. On December 3, 2014, Plaintiff filed a second motion to amend to include “recent incidents of harassment and retaliation by Defendants.”

Superior Court Civil Rule 15(a) governs motions to amend. Rule 15(a) requires that leave of court to amend the complaint shall be freely given when justice so requires. Once the Court allows leave to amend, any subsequent request for leave to amend thereafter is within the discretion of the Court.¹⁰ The Court should consider the interests of both parties when deciding a motion to amend.¹¹

This is Plaintiff’s second request for leave to amend. The Court previously granted Plaintiff’s motion to amend but Plaintiff failed to comply with the time permitted in the Court’s Order. At this point in litigation, granting Plaintiff’s motion will require adjustment of the scheduling deadlines. More importantly, granting Plaintiff a second opportunity to amend the complaint disregards Defendants’ right to fair notice of Plaintiff’s claims to prepare a meaningful defense. Accordingly, Plaintiff’s second motion for leave to amend is hereby denied.

III. Plaintiff’s Motion for Enlargement of Time and Plaintiff’s Motion to Amend the Scheduling Order

On December 3, 2014, Plaintiff filed a motion to enlarge the time for discovery, or alternatively, to amend the scheduling Order. The deadline to

¹⁰ Super. Ct. Civ. R. 15(a); *Mergenthaler, Inc. v. Jefferson*, 332 A.2d 396, 398 (Del. 1975).

¹¹ *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 248, 262-63 (Del. 1993).

complete discovery was December 1, 2014.¹² Plaintiff filed the motion for enlargement of time after the time for discovery expired.

The Court may grant a motion to extend the expired time for discovery if a movant shows its failure to complete discovery was an act of excusable neglect.¹³ Excusable neglect is “that neglect which might have been the act of a reasonably prudent person under the circumstances.”¹⁴ Determining the existence of excusable neglect is a matter of judicial discretion.¹⁵ The Court should enlarge the time for discovery if the movant demonstrates good cause, absent bad faith and undue prejudice to the other parties.¹⁶

Plaintiff’s motion lacks a showing of good cause and fails to demonstrate excusable neglect for failing to complete discovery in the time permitted. Plaintiff requests an enlargement of time for discovery because Plaintiff has not yet received Defendants’ discovery in its entirety and requests additional time to receive Defendants’ discovery and prepare dispositive motions.

Plaintiff’s grounds for relief do not warrant an enlargement of time for discovery. Pursuant to a Court Order dated December 8, 2014, Plaintiff will receive Defendants’ outstanding discovery pursuant to Plaintiff and Defendants’

¹² *Wood v. Collison*, No. N14C-04-264, at 1 (Del. Super. July 21, 2014) (ORDER).

¹³ Super. Ct. Civ. R. 6(b)(2).

¹⁴ *Ewing v. Bice*, 2001 WL 880120, at *6 (Del. Super. July 25, 2001) (citing *Cohen v. Brandywine Raceway Assoc.*, 238 A.2d 320, 325 (Del. Super. 1968) (internal quotation marks omitted)).

¹⁵ *Ewing*, 2001 WL 880120, at *6 (citation omitted).

¹⁶ *Id.*

Stipulated Protective Order. The deadline for dispositive motions is not until December 19, 2014. Therefore, Plaintiff will receive discovery from Defendants and have time to file any appropriate dispositive motions before the December 19 deadline. Accordingly, Plaintiff's motion for enlargement of time to conduct discovery is hereby denied.

However, as an alternative to an enlargement of time for discovery, Plaintiff requests the Court amend the scheduling Order. By no fault of his own, Plaintiff will receive Defendants' discovery a week after the discovery deadline but a week before the dispositive motion deadline. Because of this delay, and in an effort to ensure Plaintiff can coordinate time with the law library to prepare any appropriate dispositive motions, Plaintiff's motion to amend the scheduling Order is hereby granted. The deadline for dispositive motions is hereby set for January 9, 2014; Defendants' responses by January 30, 2014.

All other deadlines remain unchanged. Trial will go forward as scheduled on March 2, 2015.

IV. Plaintiff's Request for Court Rules and Procedures

On October 21, 2014, Plaintiff filed a letter requesting the Court supply Plaintiff with the Court's rules, procedures, and instructions regarding: (1) dispositive motions, (2) motions *in limine*, (3) pre-trial stipulations, and (4) information on taking depositions while incarcerated. It is not the Court's role to

provide legal advice to litigants. Pro se means a litigant appearing in court “[f]or one’s own behalf [a]ppearing for oneself.”¹⁷ According to the Delaware Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants, “Judges should apply the law without regard to the litigant’s status as a self-represented party and shall neither favor nor penalize the litigant because that litigant is self-represented.”¹⁸ Plaintiff is entitled to proceed to trial on the merits of his claim but not with the legal advice of the Court. The Court can and does advise Plaintiff to utilize the law library and the resources within and reminds Plaintiff of his right to retain counsel independently. The Court will not respond to subsequent requests for legal advice.

V. Defendants’ Motion to Dismiss

On December 8, 2014, Defendants filed a motion to dismiss with prejudice pursuant to Superior Court Civil Rules 37(d) and 41(b) because Plaintiff did not participate in a Court ordered deposition. Defendants also seek the award of reasonable attorney’s fees. The Court finds that Plaintiff’s failure to comply with the Court ordered deposition was justified, and therefore, Defendants’ motion to dismiss is denied.

¹⁷ *Black’s Law Dictionary* 1221 (6th ed. 1990).

¹⁸ *Delaware Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants*, General Practices, at 2.24.

On November 12, 2014, the Court granted Defendants' motion for leave to depose Plaintiff on November 25, 2014.¹⁹ Plaintiff appeared for the deposition but did not participate because he had not received a copy of the Order granting Defendants' motion for leave to take the deposition. Plaintiff also explained that he was waiting for the Court to decide his outstanding motion for appointment of counsel before he would participate in a deposition. As a result, Defendants' moved for dismissal of Plaintiff's entire civil action with prejudice pursuant to Superior Court Civil Rules 37(d) and 41(b).

Under Rule 37(d), "[i]f a party . . . fails (1) to appear before the officer who is to take the deposition, after being served with proper notice . . . the Court in which the action is pending on motion may make such orders in regard to the failures as are just." Plaintiff has the burden of demonstrating that his failure to comply with the Court ordered deposition was justified and why the circumstances are such that awarding Defendants' award of expenses is unjust.²⁰

Plaintiff filed a letter explaining that Defendants' counsel arrived at the prison to depose Plaintiff on November 25, 2014 but could not produce a copy of the Court's Order granting Defendants leave of court to depose Plaintiff. Plaintiff asserts that he did not participate in the deposition because he had not received such an Order from the Court. Later, Plaintiff filed another letter stating that he

¹⁹ Super. Ct. Civ. R. 30(a) (requiring leave of court to depose an incarcerated deponent).

²⁰ *Beeghley v. Hilck*, 2002 WL 1788108, at *4 (Del. Super. July 31, 2002).

received a copy of the Court's Order granting Defendants' motion for leave to depose Plaintiff on November 29, 2014, four days after the scheduled deposition. Plaintiff asserts that he would have participated in the Court ordered deposition had he received a copy of the Order or docket at the time of the deposition.

First, Defendants assert that a copy of the Order was sent to Plaintiff's last known address. However, it is unclear to the Court if the Order was delivered to Plaintiff's last home address or to the prison where Plaintiff is currently incarcerated. Next, Defendants point out that a notice of deposition was executed on November 20, 2014 and that such notice was then served upon Plaintiff. Again, it is unclear from the record if Plaintiff received the notice before November 25, 2014, the date of the deposition.

Plaintiff offers reasonable justification for his one-time failure to comply with the Order to participate in the deposition.²¹ The circumstances of Plaintiff's non-compliance are not tantamount to blatant or reoccurring disregard for the orders of this Court.²² Plaintiff is now aware of the Order to participate in the deposition and states that he is willing to do so. Accordingly, Defendants' motion for dismissal under Rule 37(d) is hereby denied.

²¹ See also *Buckles v. Buccini Pollin Grp., Inc.*, 2013 WL 4521086, at *1 (Del. Super. July 17, 2013) ("This Court has dismissed claims where plaintiffs have failed to cooperate by making deliberate and repeated attempts to avoid their deposition without reasonable justification.").

²² See *Beeghley*, 2002 WL 1788108, at *4-6 (dismissing plaintiff's case under Rule 37(d) as a result of plaintiffs "successful attempts to thwart Defendants' exhaustive endeavors to depose [plaintiff].").

In addition, dismissal under Rule 41(b) is not justified under these circumstances. Under Rule 41(b), a defendant may move for dismissal of an action upon a plaintiff's failure to comply with an order of the Court. The Court's authority to involuntarily dismiss a plaintiff's action for such failure to prosecute stems from the Court's inherent power to "manage its own affairs and to achieve the orderly . . . disposition of its business."²³ The record does not demonstrate a pattern of delay, neglect, or unwillingness to prosecute on behalf of Plaintiff.²⁴ Plaintiff is entitled to his day in court. Accordingly, Defendants' motion for dismissal under Rule 41(b) is hereby denied.

VI. 10 Del. C. § 8803(b)

At this time, it is appropriate for the Court to address Plaintiff's course of conduct throughout this matter. The Court has granted Plaintiff's motion to proceed with this matter *in forma pauperis*, which is a statutory status that allows an indigent litigant to pursue a meaningful litigation without paying administrative costs.²⁵ However, because *in forma pauperis* litigants do not face the same "economic disincentives to filing meritless cases that face other civil litigants," 10 *Del. C. § 8803(b)* provides a mechanism to dismiss frivolous or malicious

²³ *Harrison v. Del. Supermarkets, Inc.*, 2014 WL 2718830, at *3 (Del. June 12, 2014) (internal quotation marks omitted).

²⁴ *Cf. Id.*

²⁵ 10 *Del. C. § 8802; Denton v. Hernandez*, 504 U.S. 25, 27 (1992).

actions.²⁶ A claim is malicious for purposes of § 8803(b) if the claim is “abusive of the judicial process” or if the claim “realleges pending or previously litigated claims.”²⁷

Plaintiff is hereby warned of his tendencies to file repetitive claims that the Court has already duly considered. Plaintiff’s motions for appointment of counsel, motions for emergency injunctions, and writs of mandamus have been considered and decided upon by the Court. Continuing to file such requests, without actual grounds for relief, is malicious for purposes of § 8803(b), and the Court will address future malicious claims accordingly.

NOW, THEREFORE, this 12th day of December 2014:

- 1. Plaintiff’s Motion for Reconsideration of Plaintiff’s Motion for Appointment of Counsel is hereby DENIED;**
- 2. Plaintiff’s Motion for Reconsideration of Plaintiff’s Writ of Mandamus is hereby DENIED;**
- 3. Plaintiff’s Motion for Reconsideration of Plaintiff’s Motion for an Emergency Injunction is hereby DENIED;**
- 4. Plaintiff’s Second Motion to Amend the Complaint is hereby DENIED;**

²⁶ 10 Del. C. § 8803; *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 312 (3d Cir. 2001).

²⁷ 10 Del. C. § 8801(7); *Abraham v. State Dep’t. Of Corr.*, 2009 WL 2620287, at *2 (Del. Ch. Aug. 13, 2009).

5. Plaintiff's Motion for Enlargement of Time for Discovery is hereby DENIED;
6. Plaintiff's Motion to Amend the Trial Scheduling Order is hereby DENIED in part; GRANTED in part;
7. Plaintiff's Request for Court Rules and Procedures is hereby DENIED;
8. Defendants' Motion to Dismiss is hereby DENIED;
9. Plaintiff is hereby on notice of 10 *Del. C.* § 8803(b); and
10. Any pre-trial motions filed after the date of this Order will be addressed by the Court on the record at the pre-trial conference on February 25, 2015.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli