

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

LA MAR GUNN,)
) C.A. No. K12A-05-011 JTV
 Appellant,)
)
 v.)
)
 ZURICH AMERICAN INSURANCE)
 COMPANY,)
)
 Appellee.)

Submitted: January 18, 2013
Decided: April 29, 2013

La Mar Gunn, *Pro Se*.

James G. McMillan, Pepper Hamilton, LLP, Wilmington, Delaware. Attorney for Appellee.

Upon Consideration of Appellant's
Motion for Reargument
DENIED

VAUGHN, President Judge

Gunn v. Zurich American
C.A. No. K12A-05-011 JTV
April 29, 2013

ORDER

Upon consideration of the appellant's Motion for Reargument, the appellee's opposition, and the record of the case, it appears that:

1. The appellant in this case is La Mar Gunn and the appellee is Zurich American Insurance Company. On May 1, 2012, the Court of Common Pleas dismissed the appellant's appeal from an order of the Justice of the Peace Court dismissing a debt action brought by the appellant against the appellee. On May 31, 2012, the appellant filed a notice of appeal in this Court from the Court of Common Pleas' dismissal order. The appellee moved to dismiss that appeal as being untimely filed under Superior Court Civil Rule 72(b),¹ and this Court granted that motion on December 28, 2012.

2. On January 9, 2013, the appellant filed this "Motion for Reconsideration and for Findings of Fact and Conclusions of Law." I will treat this as a Motion for Reargument pursuant to Superior Court Civil Rule 59(e). In that motion, the appellant focuses on the merits of his complaint, but does not address the timeliness issue regarding his appeal or this motion for reargument. The appellee opposes the appellant's motion for reargument and contends that the motion should be denied as being untimely filed, because it was not filed within five days of this Court's December 28 order.

3. Under Superior Court Civil Rule 59(e), "[a] motion for reargument shall

¹ See Super. Ct. Civ. R. 72(b) ("[T]he notice of appeal shall be filed within 15 days from entry of the final judgment, order, or disposition from which an appeal is permitted by law.").

Gunn v. Zurich American
C.A. No. K12A-05-011 JTV
April 29, 2013

be served and filed within 5 days after the filing of the Court’s opinion or decision.” If a motion for reargument is untimely filed, this Court lacks jurisdiction to consider the motion.² Here, the Court entered an order dismissing the appellant’s appeal with prejudice on December 28, 2012, and the appellant filed this motion for reargument on January 9, 2013. Because that motion was not timely filed within five days of the Court’s decision, the Court lacks jurisdiction to consider the motion, and therefore, it is denied. Moreover, even if the Court did have jurisdiction to consider the merits of the motion, it nonetheless would be denied, because the appeal itself was also untimely filed, and this Court would lack jurisdiction to hear the merits of the case.³

4. For the foregoing reasons, the appellant’s Motion for Reargument is ***denied.***

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

oc: Prothonotary
cc: Order Distribution
File

² *Boyer v. State*, 919 A.2d 561, 2007 WL 452300, at *1 (Del. Feb. 13, 2007).

³ *See Johnson v. Performance Staffing*, 2004 WL 1732212, at *1 (Del. Super. July 29, 2004) (“The filing of a timely notice of appeal is a jurisdictional matter, and this Court has previously held that it cannot make exceptions even for *pro se* litigants on this issue.”).