

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

KIM E. AYVAZIAN
MASTER IN CHANCERY

CHANCERY COURTHOUSE
34 The Circle
GEORGETOWN, DELAWARE 19847
AND
NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DELAWARE 19880-3734

February 28, 2013

Dennis Scott
2524 Jefferson Street
Muskegon Heights, MI 49444

Dinah Britt
973 Paradise Lake SE
Grand Rapids, MI 49546

James P. Sharp, Esq.
Moore & Rutt, PA
122 W. Market Street
Georgetown, DE 19947

RE: Cecil W. Scott v. Roland E. Scott
C.A. No. 6604-MA

Dear Parties and Mr. Scott:

Pending before me is Dennis Scott's most recent *pro se* "Motion to Intervene" in the above captioned case that was filed with this Court on November 30, 2012, and supplemented on December 11, 2012. Defendant Roland E. Scott has responded to the latest filings, arguing that the motion should be denied on the grounds of *res judicata*, collateral estoppel, waiver, and laches. After reviewing the record, I am waiving a draft report and issuing a final report recommending that Dennis Scott's request to intervene be denied for the reasons that follow.

The other party to this action is Plaintiff Cecil Scott, who was adjudicated a disabled person on December 16, 2010 by this Court in C.M. No. 14627-S. Dennis and

Roland are two of Cecil's brothers.¹ Roland was appointed Primary Guardian of Cecil's Person on December 16, 2010. Dinah Britt is one of Cecil's sisters and on April 6, 2011, Britt was appointed Successor Co-Guardian of Cecil's Property for the limited purpose of bringing this action that seeks the return of two properties that had been transferred to Roland by Cecil in November 1996.² One of the disputed properties is located in Slaughter Neck, Sussex County, Delaware. In 1984, Dennis conveyed his one-half interest in this property to his mother, Maggie Scott, who was the other co-tenant of this property. Maggie subsequently conveyed her interest in this property to herself and Cecil as joint tenants with rights of survivorship. After Maggie's death, Cecil was the sole owner of this property until he transferred it to Roland in November 1996.

On April 4, 2012, Dennis filed a *pro se* "Motion for Permissive Joinder of Party Plaintiff" alleging that there had been an agreement between himself, Maggie, and Cecil that he would be able to get back the property in Slaughter Neck.³ Therefore, Dennis asked to be joined as a plaintiff in this case. I decided to treat his motion as a motion to intervene under Chancery Court Rule 24(a)(2) provided Dennis served and filed an appropriate pleading setting forth his claim(s) for which intervention was sought on or before June 7, 2012.⁴ On June 5, 2012, instead of filing a complaint, Dennis filed a *pro se* "Motion to Intervene" in which he alleged that the family wanted him "to intervene in this case because he is a paralegal and he can provided adequate representation and will

¹ I use first names only to avoid confusion and repetition, and not out of disrespect.

² Dennis originally had been appointed as Co-Guardian of the Property for the limited purpose of pursuing claims to set aside the 1996 property transfers, but was removed by order of the Court on April 6, 2011.

³ DI 13.

⁴ See Letter dated May 18, 2012. DI 16.

give the family the best chance of prevailing with low cost to the family and Cecil Scott's accounts."⁵ He alleged that Britt was not qualified to argue the merits of the case on her own, and would otherwise have to pay for an attorney to represent her. Finally, Dennis alleged:

Dennis Scott's claim is as long as Cecil Scott was the owner of the property in Slaughter Neck he would have not sought to get the house back. All Dennis Scott wants is for the house to be back in the name of his disabled brother Cecil Scott. Dennis Scott want this action Claims to Set Aside Certain 1996 Transfers of the Two Properties Owned by a Disabled Person to Roland Scott to be adequately represented.⁶

In a Draft Report dated July 29, 2012, I recommended that Dennis's "motion to intervene" should be denied for the following reasons:

Dennis Scott has failed to file and serve a pleading setting forth any claims he might have to one of the two properties at issue in the above civil action. Dennis Scott instead seeks to intervene in order to represent his disabled brother Cecil Scott's interests in the two properties. Dennis Scott had previously been appointed by the Court to serve as co-guardian of the property of Cecil Scott along with Dinah Britt for the limited purpose of pursuing claims to set aside the 1996 transfers of Cecil Scott's two properties to Roland Scott. The Court later removed Dennis Scott as co-guardian upon learning of Dennis Scott's criminal history. Thereafter, Dennis Scott attempted to join in the initial complaint filed by Dinah Britt on Cecil Scott's behalf on June 23, 2011, until November 9, 2011, when the Court ordered that the caption in this case be changed to reflect its current caption.

Dennis Scott's previous attempts to represent Cecil Scott as a fiduciary have been denied by the Court, and I am bound by those rulings. In his Motion to Intervene, Dennis Scott indicates that he is no longer pursuing any personal claim he might have had in one of the two parcels of land that the disabled person conveyed to Defendant in 1996. Since Dennis Scott has now waived his claim relating to one of the two properties which is a subject of this action, there is no basis for me to grant his motion under Rule 24(a)(2). Therefore, I am

⁵ Motion to Intervene at ¶4. DI 18

⁶ *Id.* at ¶ 19.

recommending in this draft report that Dennis Scott's *pro se* Motion to Intervene should be denied.⁷

No exceptions to my Draft Report were filed, and it became a Final Order of the Court on July 20, 2012.⁸

More than four months later, on December 3, 2012, Dennis filed his current motion to intervene, in which he now asks me to reconsider his motion and "forgive him for his mistake for not setting forth his claims he have [sic] to one of the properties, he did not intentionally mean to abandon his claims in one of the property [sic] in question."⁹ Although his current motion is couched as another motion to intervene, Dennis is, in effect, seeking relief under Chancery Court Rule 60(b) from the July 20th order of this Court denying his request to intervene in this action. Although there are several grounds for relief under Rule 60(b), the only possible ground for relief to be discerned in Dennis's motion is "mistake."¹⁰ However, the type of mistake contemplated by this rule does not include the apparent tactical mistake Dennis made to waive his claim to the Slaughter Neck property in his June 5th motion as a way to demonstrate that his motives were only to act in Cecil's best interests. *See generally TWA v. Summa Corp.*, 394 A.2d 241 (Del. Ch. 1978).

⁷ *Scott v. Scott*, C.A. No. 6604-MA, Del. Ch. July 9, 2012 (Master's Draft Report) (footnotes omitted). DI 19.

⁸ DI 20.

⁹ Motion to Intervene, ¶3. DI 22

¹⁰ Under Rule 60(b), a court "may relieve a party ... from a final judgment, order, or proceeding for the following reasons; (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no

Waiver is the voluntary and intentional relinquishment of a known right. *See Realty Growth Investors v. Council of Unit Owners*, 453 A.2d 450, 456 (Del. 1982). To the extent that Dennis may have an interest in the Slaughter Neck property, his proposed intervention in this action would have been as a third party adverse to both Cecil and Roland. Dennis's claim of an interest in that property, therefore, would have been in direct conflict with his stated position that all he "wants is for the house to be back in the name of his disabled brother Cecil Scott."¹¹ Having made his voluntary decision to abandon his claim of interest in this property, Dennis may not now seek relief from the Court's final order of July 20, 2012. Accordingly, the motion to intervene should be denied.

Very truly yours,

/s/ Kim E. Ayvazian

Kim E. Ayvazian
Master in Chancery

longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment."

¹¹ DI 18.