

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

LIFE SOLUTIONS, INC., Guardian of)	
SARAH R. OGDEN)	
)	
Plaintiff,)	
v.)	C.A. No. 2005-11-004
)	
BARBARA E. DIMAIO,)	
)	
Defendant.)	

Date Submitted: December 28, 2006
Date Decided: January 18, 2007

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**ORDER ON PLAINTIFF'S MOTION TO
ALTER OR AMEND JUDGMENT - DENIED**

Plaintiff brings this motion pursuant to Court of Common Pleas *Civil Rule* 60(a) to alter or amend the amount of judgment awarded by the Court in its decision dated December 12, 2006. The motion is opposed by defendant.

Under Rule 60(a), the Court may correct “[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission” at any time either of its own initiative or on the motion of a party.

In its decision after trial, the Court calculated the money owed by the Defendant Barbara DiMaio to Sarah Ogden as follows: The Court found that Ogden had withdrawn

\$35,998.00 in 2002, \$5,000.00 in 2003, and \$8,000 in 2004. In determining which of these funds were loaned to the DiMaio, the Court concluded that, while Ogden original, primary purpose in establishing the account was to help DiMaio, Ogden could have subsequently used the account in question not just for DiMaio, but also “for herself or other parties.” However, since DiMaio confirmed in a statement dated February 25, 2005 that Ogden lent her “approximately \$40,000.00 over several years,” the Court concluded that “the initial withdrawal in 2002, and subsequent withdrawals in 2003 were for DiMaio’s benefit.” By adding up the withdrawals from these *two* years—excluding the withdrawals in 2004—the Court concluded that Plaintiff had met its burden of proving that Ogden had lent DiMaio \$40,998.00. The Court thereafter concluded based upon DiMaio’s testimony she had repaid \$24,000.00, and thereby owed \$16,998.00.

In its motion to alter or amend judgment Plaintiff has apparently misread the Court’s decision regarding the difference between the funds withdrawn by Ogden and the funds loaned to DiMaio. Although Plaintiff presented sufficient evidence at trial to show that Ogden withdrew \$48,998.00, Plaintiff did not meet its evidentiary burden of proving by the preponderance that Ogden made all withdrawals between 2002 and 2004 exclusively for DiMaio’s benefit. Ogden’s initial motivation for opening the account and DiMaio’s admission that Ogden had lent her “approximately \$40,000.00 over several years,” establish that the first \$40,998.00, withdrawn in the early days of the account, were for DiMaio’s benefit. However, Plaintiff did not present sufficient evidence to prove that Ogden made the later withdrawals in 2004 for the purpose of loaning DiMaio additional funds. Although Ogden established the account primarily to help DiMaio, she had a history of giving financial help to many other family members, in addition to her

own needs. To conclude as plaintiff alleges that all of the funds were given to defendant, would require the Court to speculate without any credible evidence of support. Without further evidence, Plaintiff therefore did not meet its burden of proving that Ogden loaned DiMaio the full amount of \$48,998.00.

Accordingly, Plaintiff's motion to alter or amend judgment is hereby Denied.

SO ORDERED this 18th day of January, 2007

Alex J. Smalls
Chief Judge