IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

HARRY ANDERSON	)	
	)	C.A. No. 11C-04-027
Plaintiff	)	
v.	)	
DAWN TINGLE, CAROL POWELL, WILLIAM THOMPSON, and PERRY PHELPS	)	
Defendants	)	

Submitted: August 22, 2011
Decided: August 30, 2011

On Plaintiff's "Motion to Alter of [sic] Amend the Judgment" and for Appointment of Counsel.
DENIED.

ORDER

Harry Anderson, Wilmington, Delaware, *pro se*.

Joseph C. Handlon, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

COOCH, R.J.

1. This 30th day of August 2011, upon consideration of Plaintiff's "Motion to Alter of [sic] Amend the Judgment," it appears to the Court that:

2. By Letter Opinion of August 15, 2010, this Court granted Defendants' motion to dismiss Plaintiff's complaint.[1] This Court's August 15 dismissal of Plaintiff's complaint represented the dismissal of two virtually identical complaints filed by Plaintiff and consolidated by this Court.[2] Plaintiff alleged that Defendants, via a pattern of mishandling his prison mail, violated his constitutional right of access to courts.[3] Specifically, Plaintiff alleged that a delay occasioned by Defendants' mishandling of his mail resulted in the denial of his motion for postconviction relief that was then-pending in the Court of Common Pleas of Delaware County, Pennsylvania.[4] This Court held that Plaintiff did not sufficiently plead facts that would support a claim that Defendants' conduct resulted in the dismissal of "a nonfrivolous, arguable claim" in his Pennsylvania postconviction motion.[5] Consequently, Plaintiff did not adequately set forth any actual injury resulting from Defendants' alleged conduct, thereby failing to satisfy one of the "constitutional prerequisite[s]" to his claim.[6]

3. Plaintiff now moves this Court to "reconsider[]" or "amend the judgment" based on "fundamental fairness."[7] Moreover, though not indicated in the caption nor included as a separate motion, the body of Plaintiff's motion indicates that he is also moving for the appointment of counsel because he is unable to "[articulate] this matter properly."[8]

4. Plaintiff bases his motion on the allegation that he was given "less than 6 days" to respond to Defendants' motion to dismiss, causing him an "unjustifiable hardship" and requiring him to "request[] help from other inmates" to help him "formulate a response [to Defendants' motion to dismiss]."[9] Plaintiff also contends that his extradition to Delaware County jail, in Pennsylvania, coupled with his transfers among Delaware correctional facilities and his difficulty in obtaining permission to deviate from his Level IV work release sentence in order to utilize the law library at

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[1] *Anderson v. Tingle, et al*,, Del. Super., C.A. No. 11C-04-027, Cooch, R. J. (Aug. 15, 2011) (Letter Op.).
[2] *Id.* n.1.
[3] *Id.*
[4] *Id.* at 3.
[5] *Id.* (citing *Robinson v. Danberg*, 729 F. Supp. 2d 666, 676 (D. Del. 2010)).
[6] *Id.* (citing *Robinson*, 729 F. Supp.2d at 676).
[7] Plaintiff's "Motion to Alter of [sic] Amend the Judgment at 2.
[8] *Id.*
[9] *Id.*

the New Castle County Courthouse, impeded his ability to conduct legal research when preparing his response to Defendants' motion.[10]

5. Although not cited by Plaintiff, Superior Court Rule of Civil Procedure 60 controls the disposition of a motion for relief from a judgment of this Court. In relevant part, Rule 60(b) states:

> On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (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 longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. A motion under this subdivision does not affect the finality of a judgment or suspend its operation.

6. Plaintiff's instant motion does not raise any of the foregoing grounds for granting relief from a judgment of this Court. There is nothing to suggest that the dismissal of Plaintiff's complaint was due to "mistake, inadvertence, surprise, or excusable neglect," or that Plaintiff is in possession of any newly discovered evidence. Likewise, there is absolutely no indication that this Court's August 15 order is the product or fraud or is otherwise void. Similarly, there is no other reason that would justify relief from this judgment.

7. To the extent Plaintiff contends that his successive incarcerations and transfers among correctional facilities militate in favor of granting relief from this Court's judgment, this assertion is wholly without merit. The Court's docket in this case reveals that Defendants' motion to dismiss was filed on May 17, 2011, and Plaintiff thereafter filed a "Motion to Amend and Response to Motion to Dismiss" on May 26. Pursuant to this Court's order

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[10] *Id.*

of May 19, Plaintiff was to file his response by June 1, 2011.[11] Thus, the basis of Plaintiff's contention that he had "less than 6 days"[12] to respond to Defendants' motion is both unclear and factually incorrect; pursuant to the terms of this Court's order, Plaintiff was given 15 days from the date Defendants' motion was filed to respond to Defendants' motion to dismiss; Defendant apparently elected to file his response on May 26, which was six days prior to the deadline imposed by this Court's order. In any event, Plaintiff's alleged difficulties in obtaining access to a law library are irrelevant to the issue of whether this Court's judgment was the result of mistake, inadvertence, surprise, excusable neglect, or fraud.

8. Similarly, this Court's decision on Defendants' motion to dismiss would have been the same, regardless of Plaintiff's access, *vel non*, to a law library. The reasoning of this Court's August 15 opinion remains sound; Plaintiff's alleged difficulties in accessing a law library are irrelevant to this Court's analysis of the allegations in Plaintiff's complaint *vis-à-vis* the applicable legal standard to which Plaintiff's complaint is held for purposes of a motion to dismiss.

9. Finally, Defendants have filed an objection to Plaintiff's instant motion, characterizing it as a motion for reargument, pursuant to Superior Court Civil Rule 59(e).[13] Under the standard for a motion for reargument, Plaintiff's instant motion would likewise be denied. Under the "well-settled' standard of review of a motion for reargument, "a party seeking reargument must show that the Court has misapprehended the law or the facts in a manner that would change the outcome of its decision were it correctly and/or fully informed."[14] A motion for reargument will be denied if it "merely advance[s] the same matters that were already considered in the original proceeding."[15]

10. Plaintiff has not alleged, much less substantiated, that this Court misapprehended the law or the facts such that its decision would be different had it been correctly informed. Likewise, Plaintiff has simply reiterated his

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[11] *Anderson v. Tingle, et al*., Del. Super., C.A. No. 11C-04-027, Cooch, R. J. (May 19, 2011) (ORDER).

[12] *See supra* note 9.

[13] Defs.' Objection to Pltf.'s Mot. for Reargument.

[14] *Steadfast Ins. Co. v. Eon Labs Mfg., Inc.*, 1999 WL 743982, at *1 (Del. Super.) (citation omitted).

[15] *Id.*

previous allegation that Defendants engaged in "unjustified" action that violated his civil rights.[16] Plaintiff has not meaningfully supplemented or otherwise clarified his allegations; instead, he "merely advance[d] the same matters that were already considered"[17] in this Court's disposition of Defendants' motion to dismiss.

11. Plaintiff's motion for appointment of counsel is also denied. The instant case is a civil case; Plaintiff is not entitled, as a matter of right, to the appointment of counsel,[18] although this Court has the inherent power to appoint counsel to an indigent prisoner.[19] However, this power is "seldom" exercised, and is generally appropriate only when the prisoner clearly demonstrates a deprivation of his constitutional right of meaningful access to the courts.[20] In dismissing Plaintiff's complaint, this Court has previously determined that Plaintiff has not demonstrated any deprivation of meaningful access to the courts; moreover, Delaware Courts have defined "meaningful access" to mean "either access to an adequate law library or legal assistance in the preparation of complaints, appeals, petitions, etc."[21] Plaintiff's singular allegation of lack of access to a law library involves his transfer to Plummer Community Correctional Center, which he asserted has no library; however, Plaintiff himself indicated that, while at Plummer Community Correctional Center, he was given a three hour pass to the courthouse law library.[22] Although Plaintiff's "chance of success may be

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[16] Plaintiff's "Motion to Alter of [sic] Amend the Judgment at 2.
[17] *See supra* note 15.
[18] *See, e.g., State v. Rainier*, 2010 WL 2541665, at *1 (Del. Super.) ("Courts have been reluctant, however, to extend [the right to counsel] to indigent litigants in civil cases, and have almost universally declined to do so.") (citations omitted).
[19] *See, e.g., Vick v. Dept. of Correction*, 1986 WL 8003, at *2 (Del. Super.) ("Therefore, notwithstanding the absence in the Delaware Code of an explicit grant of power to the Superior Court, it is manifest that as a court of general jurisdiction and one that is empowered with supervisory power over the administration of prisons, the Superior Court possesses inherent authority to appoint counsel for an indigent prisoner in a civil suit if it is demonstrated that the State has not afforded "meaningful access" to the courts by other alternatives.").
[20] *Id*; *see also Deputy v. Conlan*, 2008 WL 495791, at *1 (Del. Super.) ("The State rarely appoints counsel to prisoners for civil claims.") (citation omitted).
[21] *Vick*, 1986 WL at *1.
[22] Plaintiff's "Motion to Alter of [sic] Amend the Judgment at 2. Plaintiff is apparently dissatisfied with this three hour pass to the courthouse law library because, according to him, "by the time he got [to the courthouse library] and got the law books it was time to start back [to the correctional facility]." *Id.* However, "mere allegations of limits on the

diminished without the assistance of counsel, it cannot be said that the State has denied him 'meaningful access' to the courts."[23] Therefore, this Court declines to appoint counsel to Plaintiff.[24]

12. Therefore, for the reasons stated above, Plaintiff's "Motion to Alter of [sic] Amend the Judgment" and for Appointment of Counsel is **DENIED.**

IT IS SO ORDERED.

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Richard R. Cooch, R.J.

oc: Prothonotary

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amount of time an inmate can spend in the prison library are not sufficient to create a right to appointed counsel in a civil case." *Rainier*, 2010 WL at *1.

[23] *Vick*, 1986 WL at *3; *see also Rainier*, 2010 WL at *1 ("[I]n this case, Defendant already has filed an answer and has propounded written discovery to the plaintiff. These filings indicate that Defendant is capable of complying with the Court's rules and procedures and that appointment of counsel is not necessary to ensure meaningful access [to courts].") (citation omitted).

[24] The Court also notes that Plaintiff has not represented that he made any effort to secure private counsel, notwithstanding the fact that he is apparently at liberty at the present time. *See, e.g., Miller v. Taylor*, 2010 WL 1731853, at *2 (Del. Super.) ("Moreover, and perhaps most importantly, Plaintiff has not made any representations to the Court about his attempts, if any, to retain private counsel to represent him in this action. Attorney's fees are available in civil rights actions. . . .") (citation omitted); *Jenkins v. v. Dover Police Comm'r*, 2002 WL 663912, at *3 (Del. Super.) ("Furthermore, the Court notes that there has been no showing of plaintiff's efforts to retain private counsel in this matter. Because attorney's fees may be awarded in successful § 1983 actions, a claim with merit may be of interest to various members of the Delaware bar with no cost.").