

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

HAROLD C. SAVAGE,	:	C.A. No. 01-07-097
Plaintiff/Appellant	:	
vs.	:	
DAVID TOWNSEND and	:	
PATRICIA TOWNSEND,	:	
Defendants.	:	

Date Decided: April 7, 2003

William M. Chasanov, Esquire
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Georgetown, DE 19947
Attorney for Plaintiff

David Townsend
Patricia Townsend
13337 Rollie Road West
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Pro Se Defendants

DECISION ON MOTION FOR RECONSIDERATION

In this above-captioned matter, the defendant David Townsend filed a “Motion to Dismiss” the action on December 18, 2002. On January 6, 2003 the Commissioner of this Court heard defendant’s motion, and on January 15, 2003 denied the motion to dismiss. The defendant’s motion was potentially case-dispositive, therefore objection to, and review of the Commissioner’s decision is governed by Civil Rule 112 (A)(4).

Defendant complied in part with the rules of this Court by filing a “Motion for Reconsideration” of the Commissioner’s order within ten days of the date of the order. The Court accepts the motion as an appeal from the denial of the motion to dismiss, under Civil Rule

112 (A) (4) (ii). However, the defendant failed to comply with Rule 112 (A) (4) (iii), which provides that “a party filing written objections to a Commissioner’s order shall cause a transcript of the proceedings before the Commissioner to be prepared, served, and filed unless, subject to the approval of a Judge, all parties agree to a statement of facts.” Defendant filed neither a request for a transcript of the January 6, 2003 hearing, nor a statement of facts stipulated to by the parties for this Court’s approval. Accordingly, on January 15, 2003 the Clerk wrote to defendant David Townsend and notified him that he must comply with the requirements of Rule 112 (A) (4) (iii) within twenty days. Defendant failed or refused to do so. Rule 112 (B) provides that “a party [seeking reconsideration or appeal of a Commissioner’s order] who fails to comply with the provisions of this Rule may be subject to dismissal of said motion . . .” On March 12, 2003 the Court dismissed the defendant’s motion for reconsideration for failure to comply with the Rules of this Court.

On February 11, 2003 the defendant filed another “Motion to Dismiss,” in which the defendant set forth substantially the same grounds as in his prior motion to dismiss, and added a new ground that the plaintiff failed to amend his complaint as ordered by the Commissioner on January 6, 2003. In fact, the plaintiff had filed an amended complaint with this Court on January 24, 2003, rendering this added ground moot. On March 12, 2003, the Court denied this motion to dismiss without hearing, inasmuch as it was virtually identical to the motion previously dismissed by the Court.

On March 25, 2003 the defendant David Townsend filed a “Motion to Dismiss Reconsideration.” The Court interprets this as a motion for reconsideration of the Court’s dismissal of defendant’s February 11, 2003 motion to dismiss. The apparent ground set forth in

the motion is that the Court erred in denying the motion without a hearing, and that “a prompt and fair hearing should have been granted”

It is within the discretion of this Court, however, whether to hold a hearing on a motion if determination of the motion does not require the introduction of evidence or the taking of testimony. Determination of defendant’s second motion to dismiss required neither. The motion on its face addressed issues already raised in defendant’s previously denied motion, and an issue rendered moot by the plaintiff’s amended filing prior to defendant’s motion. Defendant’s request that the Court reconsider its denial of the motion to dismiss likewise is **DENIED**.

Kenneth S. Clark, Jr., Judge