

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

AMANDA MITCHELL, Individually and)	
as Administratrix of the Estate of)	
HERBERT L. MITCHELL, deceased,)	
STACIE L. MITCHELL and, SARA A.)	
MITCHELL,)	
)	C.A. No.: 10C-06-005 JOH
Plaintiffs,)	
)	
v.)	
)	
ALLEN FAMILY FOODS, INC. ,)	
a Delaware Corporation,)	
)	
Defendant.)	

ORDER

This 17th day of May 2013, defendant Allen Family Foods, Inc. moves for reargument, or in the alternative, a new trial from this Court’s April 24, 2013 decision determining Herbert Mitchell’s employment status at the time of his death. It further appears that:

1. Defendant Allen Family Foods, Inc. (“Allen”) moves for reargument, or in the alternative, a new trial, pertaining to this Court’s decision that plaintiffs are not estopped from bringing this claim and that Allen Hatchery (“Hatchery”) was decedent’s employer at the time of his death. Allen’s motion merely rehashes the issues already considered and decided by the Court and does not establish that the Court misapprehended the law or facts in this case. Also, a new trial is not necessary in this case, as there is nothing in the extensive record warranting

further litigation of this issue. Accordingly, Allen's motion for reargument, or in the alternative, a new trial, is DENIED.

2. This case arises from a fatal work-related injury that occurred at the Hatchery site in Delmar, Delaware. On June 4, 2009, decedent, Herbert L. Mitchell ("Mitchell") was assisting to clean out a large silo that was clogged when soybeans and soybean meal fell on him, crushing him to death. Plaintiffs filed wrongful death and survivor claims against defendant, Allen Family Foods, Inc. ("Allen") alleging that Allen's negligence proximately caused Mitchell's death. Allen argues that plaintiffs' claims are barred by the exclusivity provision of the Workers' Compensation Act, 19 *Del. C.* § 2304, because Allen was Mitchell's employer at the time of his death.
3. On the eve of trial, the parties raised an issue that the determination of Mitchell's employer is an issue of law, as opposed to factual one. The Court held a hearing and determined that it would conduct a bench trial to determine this limited issue. A subsequent trial on the issue of liability was contingent on the Court's determination of Mitchell's employment status at the time of his death.
4. In a memorandum opinion dated April 24, 2013, this Court held: (1) plaintiffs are not estopped from pursuing their action against Allen; and (2) determined that the Hatchery, and not Allen, was Mitchell's employer at the time of his death, and thus, plaintiffs' claims are not barred by the exclusivity provision of

the workers' compensation statute.¹ In so ruling, the Court analyzed the factors set forth by the Delaware Supreme Court in *Newton Trucking Co. v. Neal*² including: (1) who hired the employee; (2) who may discharge the employee; (3) who compensated the employee; and (4) who had control of the employee.³ The issue regarding control is the most important factor to consider in the analysis.⁴

5. Allen is requesting reargument under Superior Court Rule 59(e), which permits this Court to determine from the motion and answer whether reargument will be granted. “The purpose of a motion for reargument is to request that the Trial Court reconsider its finding of fact, conclusions of law, or judgment in order to correct errors prior to appeal.”⁵ A motion for reargument will generally be denied unless the moving party can demonstrate that this Court “overlooked a precedent or legal principle that would have controlling effect,

¹ *Mitchell v. Allen Family Foods, Inc.*, C.A. No. 10C-06-005 (Del. Super. Apr. 24, 2013).

² 204 A.2d 393 (Del. 1964).

³ *Id.* at 395.

⁴ *Porter v. Pathfinder Servcs.*, 683 A.2d 40, 42 (Del. 1996).

⁵ *Lowman v. Wal-Mart Stores, Inc.*, 2006 WL 2382776, at *1 (Del. Super. Aug. 4, 2006) (citing *Kovach v. Brandywine InnKeepers, Ltd. P'ship*, 2001 WL 1198944, at *1 (Del. Super. Oct. 1, 2001)).

or that it has misapprehended the law or the facts such as would affect the outcome of the decision.”⁶

6. A motion for reargument, however, “is not a device for raising new arguments or stringing out the length of time for making an argument.”⁷ Additionally, parties seeking reargument should not rehash the arguments previously decided by the Court.⁸ The moving party bears the burden of demonstrating “newly discovered evidence, a change in the law or manifest injustice.”⁹
7. Allen argues that this Court’s decision was “too narrow.”¹⁰ Specifically, it contends the Court should have engaged in additional analysis in determining the issue of Mitchell’s employer, such as, it was Allen’s human resources department that hired Mitchell, not the Hatchery. In support of its argument, Allen cites to *Dickinson v. Eastern Railroad*,¹¹ *Weiss v. Security Storage, Inc.*,¹² *Porter v. Pathfinder Servcs.*,¹³ and *Criswell v. McFadden*.¹⁴

⁶ *Lowman v. Wal-Mart Stores, Inc.*, 2006 WL 2382776, at *1 (Del. Super. Aug. 4, 2006) (quoting *Denison v. Redefer*, 2006 WL 1679580, at *2 (Del. Super. Mar. 31, 2006)).

⁷ *Dension v. Redefer*, 2006 WL 1679580, at *2 (Del. Super. Mar. 31, 2006) (quoting *Beatty v. Smedley*, 2003 WL 23353491, at *2 (Del. Super. Mar. 12, 2003)).

⁸ *Lowman*, 2006 WL 2382776, at *1.

⁹ *Lovett v. Cheney*, 2007 WL 1175049, at *1 (Del. Super. Apr. 19, 2007) (quoting *Brenner v. Village Green, Inc.*, 2000 WL 972649, at *1 (Del. Super. May 23, 2000)).

¹⁰ Def. Mot. for Reargument, ¶ 1.

¹¹ 403 A.2d 717 (Del. 1979).

¹² 272 A.2d 111 (Del. Super 1970), *aff’d* 280 A.2d 534 (Del. 1971).

8. Allen also asserts, once again, that plaintiff's are estopped from claiming the Hatchery was Mitchell's employer. This contention is based on interrogatory answers plaintiffs gave in their action against Allen before the Industrial Accident Board.
9. Plaintiffs claim that Allen's motion must be denied, as the burden granting a motion for reargument has not been met in this case. They contend that the appropriate test applicable in determining an employer/employee relationship are the four factors enumerated in *Newton*. Second, plaintiffs submit that Allen's motion is flawed, as it ignores the facts elicited at trial, which this Court utilized in applying the *Newton* test. Finally, plaintiffs argue that a party is not bound by its answers to interrogatories, but yet Federal Rule of Civil Procedure 26(e) was designed to prevent parties from surprise at trial based on the disclosure of new facts not raised during the discovery process.
10. The Court considered all the cases which Allen cites in support of its current motion, excluding *Criswell*. However, this Court covered all, or many of the same matters, as did the District Court in *Criswell* during its discussion of the general background of the three corporations. There is nothing new there. Further, the Court squarely addressed Allen's estoppel argument and rejected it. Its argument here is merely a rehash.

¹³ 683 A.2d 40 (Del. 1996).

¹⁴ 2007 WL 103492 (D. Del. 2007).

11. Allen has not met its burden to warrant this Court to grant its motion for reargument, or in the alternative, a new trial, to establish the issue of control. Contrary to Allen's assertions, the proper test to apply to determine the existence of an employer/employee relationship is set forth in *Newton*. Additionally, in all of the cases cited in support of Allen's argument,¹⁵ the court analyzed the *Newton* factors. This Court will not grant reargument merely because Allen is not satisfied with the Court's ruling. Allen's motion is nothing more than a rehash of its arguments already considered by the Court.

Conclusion

For the reasons stated herein, Allen Family Foods' motion for reargument is DENIED.

IT IS SO ORDERED.

/s/ Jerome O. Herlihy

J.

¹⁵ The Court notes that Allen previously cited the cases in defendant's post-trial memorandum.