

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

CHARLOTTE HENNEGAN, Individually :
and CHARLOTTE HENNEGAN, as the : C.A. No.: 07C-02-015 RBY
Executrix of the Estate of CHARLES T. :
HENNEGAN, III, and PATRICIA :
LITZENBERGER, ELIZABETH :
HOEFFLER, MARY PRUCHNIEWSKI, :
MARGARET MOSETTI, Daughters of :
Charles T. Hennegan, III, :
:
Plaintiffs, :
:
v. :
:
CARDIOLOGY CONSULTANTS, P.A., :
and ALI DELBAKHS, M.D., :
:
Defendants. :

Submitted: July 25, 2008
Decided: September 9, 2008

Upon Consideration of Plaintiffs'
Motion for Reargument
DENIED

OPINION AND ORDER

Stephen A. Hampton, Esq., Grady & Hampton, LLC, Dover, Delaware for Plaintiffs.

Michael B. Snyder, Esq., Snyder, Weltchek & Snyder, Baltimore, Maryland for Plaintiffs.

Dennis D. Ferri and Amy A. Quinlan, Esq., Morris, James, LLP, Wilmington, Delaware for Defendants.

Young, J.

Plaintiffs filed a Motion for Reargument following the Court's Order granting Summary Judgment in favor of the Defendants. Plaintiffs' Motion is compromised of eight grounds for reargument. The Court will address each ground seriatim.

Standard of Review

The purpose of a motion for reargument made pursuant to Superior Court Civil Rule 59(e) is to request that the trial court reconsider its findings of fact, conclusions of law or judgment in order to correct errors prior to appeal.¹ A motion for reargument should not rehash the arguments already decided by the court.² Moreover, a motion for reargument is not a "device for raising new arguments or stringing out the length of time for making an argument."³ Generally, reargument will be denied unless the moving party can demonstrate that the trial court "overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision."⁴

Discussion

1. Plaintiffs first request a declaratory judgment clarifying whether the July 15, 2008 Opinion dismissed the suit in its entirety, including the survival action Subject to the provisions of paragraph 8, below, the Court answers this question in the

¹ *Kovach v. Brandywine Innkeepers Ltd. Partnership*, 2001 WL 1198944, at *1 (Del. Super. Oct. 1, 2001)(citing *Hessler, Inc. V. Farrell*, 260 A.2d 701, 702 (Del. 1969)).

² *Id* (citing *McElroy v. Shell Petroleum, Inc.*, 1992 WL 397468 (Del. Supr. Nov. 24, 1992)).

³ *Denison v. Redefer*, 2006 WL 1679580, at *2 (Del. Super. Mar. 31, 2006).

⁴ *In re Asbestos Litigation*, 2008 WL 1735070 (Del. Super. Mar. 12, 2008).

affirmative.

While much of the Opinion focused on Delaware's Wrongful Death Statute, a good portion also addressed the Release between the parties. This Release, by its textual language is a full and final compromise between the Releasers and the Releasees.⁵ The Releasers are not only the individual plaintiffs, but also Charlotte Hennegan as the Executrix of the Estate of Charles T. Hennegan, III.⁶ Therefore, the Estate of the decedent released the Defendants in the same way as the individual Plaintiffs did, making summary judgment appropriate.

2. Plaintiffs next challenge the Court's statement that "there are no disputed facts" by pointing to a comment about the meaning of consideration. This paragraph seems to revisit Plaintiffs' argument about not receiving settlement money for the death of the decedent.

The discussion of the allocation of the settlement funds wrongly presupposes relevance. The Court's comment about money and consideration simply pointed out that money is not the only acceptable form of consideration generally. It should not be viewed as a decisional linchpin.

The wrongful death statute allows but one action for the death of a person.⁷

⁵ Paragraph 1 uses the phrase, "release and forever fully and completely discharge." Paragraph 2 says, "wish to resolve all claims." Paragraph 3, "is intended to protect the Releasees from any further exposure of future liability from any claim." Paragraph 4, "this Release is intended to bar and does bar any claim in any court." Paragraph 7 claims the purpose of the Release is "to evidence a final compromise and settlement of any and all claims." Paragraph 8 says the "Release applies to all past and present injuries."

⁶ This title is used in the first sentence of the Release as well as in the signatory section at the end of the document.

⁷ 10 *Del. C.* §3724(e).

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Plaintiffs filed and settled a case with a wrongful death claim.⁸ The argument about monies received is extraneous. The wrongful death case was seen through to fruition. The reference to who received what money is also extrinsic evidence attempting to explain an unambiguous contract. A court will not look to such evidence, unless a contract is ambiguous on its face.⁹ While Plaintiffs attempt to characterize one paragraph as creating an ambiguity, this is not the case. The entire agreement can be read as internally congruous.

Plaintiffs may disagree with some of the conclusions reached by the Court or propounded by Defendant. However, such disagreement does not create a disputed material fact, capable of acting as a barrier to the imposition of summary judgment.

3. Plaintiffs next argue that the original theory of liability proved incorrect, they are saying that the Second Amended Complaint in the first suit contained reference to erroneous evidence, i.e. the expert reports. That case, based on that Complaint, was settled, and a stipulation of dismissal with prejudice of the entire case was filed with the Court. No confusion and nothing previously unconsidered exists here. Plaintiffs assert nothing not previously considered.

The wrongful death statute allows one action in the death of a person, not one cause of action against each potentially responsible party. The statutory limitation is dependent on the death alone by its plain language. The original action must include everyone who could be responsible. If a lack of culpability on anyone's part became known along the way, that party should have been carefully dismissed to

⁸ *Hennegan v. Christiana Care Health Services, Inc. et. al.*, C.A. 04C-08-006 Vaughn, P.J. (Nov. 30, 2005).

⁹ *Kaiser Aluminum Corp. v. Matheson*, 681 A.2d 392, 395 (Del. 1996)(A court must effect the clear intent of the parties if there is no ambiguity.)

preserve anything in the future, should any such thing emerge.

4. Plaintiffs next attempt to refute the point when facts became available to them. There can be no dispute that the decedent died well before the signing of the releases now at issue. Any action that could be construed as negligent, as related to the decedent, was in the past. Plaintiffs seem to claim that their understanding and investigation were facts. But the facts, the things that happened, were in the past. Plaintiffs' detection of these facts was within Plaintiffs' ability well before the Release and Dismissal were agreed upon and executed.

Defendants properly classify Plaintiffs' argument as a lesson in the clarity of hindsight. Evidently, the strategy Plaintiffs used has proved less successful than they may have hoped. However, the Court cannot correct Plaintiffs' strategic decisions by bending clear statutory directives.

5. Plaintiffs next discuss President Judge Vaughn's decision in the second suit. At that time, the Court had less information than it now has. While that decision is certainly significant, and was reviewed by the Court as such, it is not binding legal precedent in this consideration, and it clearly was not overlooked by this Court, which would warrant reargument.

6. Contract interpretation is a question of law not fact.¹⁰ In reading the release as a whole, the Court finds that it is not ambiguous when following the basic rules of construction. While such reading is contrary to Plaintiffs' arguments, this ground is merely a re-hashing of a question that was asked and answered in the Court's opinion.

That decision explained the interpretation of the section which Plaintiffs claim allows for the current suit. That referenced section is both contrary to the release as

¹⁰ *Pellaton v. Bank of New York*, 592 A.2d 473, 478 (Del. 1991).

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a whole and contrary to state law. Whatever Plaintiff's view of the specific language, which was, in fact, reconciled with the remainder of the release by the Court, it will not be read in direct contravention to the totality of the release.

7. The Court read the release as a whole. It was interpreted using the basic rules of construction and the ordinary meaning of common phrases. This paragraph is again re-hashing the meaning of this section in the release. Plaintiffs also bring up ambiguity again. The Court did not find this section, or the release as a whole, to be ambiguous. There was no need to construe it against the drafters, because the release was clear.

8. Plaintiffs' final argument is a new argument. It was not addressed at all in the briefs or in the arguments. Indeed, a Motion for Reargument is not properly the forum to raise new issues.¹¹

Nevertheless, in order for Plaintiffs to be heard on all their points, the Court will consider this one newly asserted argument. Accordingly, counsel for Defendant may reply to this argument, if desired, on or before September 30, 2008.

Subject to further consideration of this new argument number 8, Plaintiffs' Motion for Reargument will be denied. The Motion did not demonstrate the Court any overlooked precedent or legal principle with a controlling effect. The Motion also failed to show a misapprehension of fact or law that would affect the outcome. Other than the request for declaratory judgment, Plaintiffs' Motion attempts to reargue the same issues that were previously argued and decided. The Court listened to and read the positions of both parties. After thoughtful consideration, the court granted summary judgment in favor of the Defendants. As to all previously

¹¹ *Denison*, 2006 WL 1679580, at *2.

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considered items, Plaintiffs' positions herein are not well taken.

/s/ Robert B. Young
J.

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