

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

CLARENCE HARRISON,)	
)	
Plaintiff,)	
)	C.A. No. 08C-06-216-PLA
v.)	
)	
STATE OF DELAWARE and)	
DELAWARE STATE POLICE)	
OFFICER L. TOWNS)	
)	
Defendants.)	

**ON PLAINTIFF’S MOTION TO VACATE DISMISSAL
DENIED**

Submitted: October 14, 2008
Decided: October 16, 2008

This 16th day of October, 2008, upon consideration of Plaintiff’s Motion to Vacate Dismissal, it appears to the Court that:

1. Plaintiff Clarence Harrison (“Harrison”) initiated a racial profiling claim against the State and Delaware State Police Officer L. Towns (collectively, “Defendants”) in this Court. By opinion dated October 2, 2008, the Court granted the Defendants’ Motion to Dismiss pursuant to Superior Court Civil Rule 12(b)(6), finding that Harrison had failed to make

a *prima facie* showing of an equal protection violation and that Officer Towns was immune from suit under the State Tort Claims Act.¹

2. On October 14, Harrison filed a Motion to Vacate Dismissal. Harrison's motion presents three contentions: (1) that he was not provided with a hearing date by the prothonotary's office; (2) that "the entire content of the statement relat[ing] to the subject matter, by the Defendants and the attorney is wrong" because "the information does not relate to the subject at all"; and (3) that the judge was not given "proper knowledge" of this matter and Harrison "was not there to defend."²

3. Based upon its content, which essentially seeks to have the Court revisit the issues raised upon the Defendants' Motion to Dismiss, Harrison's filing will be treated as a motion for reargument. Superior Court Civil Rule 59(e) provides that "[a] motion for reargument shall be served and filed within 5 days after the filing of the Court's opinion or decision." Harrison's claim was dismissed on October 2, 2008. The final day for filing a motion for reargument was October 9, 2008. Harrison's motion is therefore untimely.

¹ 2008 WL 4447731 (Del. Super. Oct. 2, 2008).

² Docket 9 (Pl.'s Mot. to Vacate Dismissal).

4. Moreover, even if it had been timely filed, Harrison's motion does not demonstrate any basis on which he would be entitled to reargument. A motion for reargument is appropriate when the Court labored under a misapprehension as to the facts or the law that affected its decision.³ Reargument will be granted where "principles or authorities were overlooked and such points would have changed an outcome had they been addressed."⁴

5. Harrison has not shown that circumstances justifying reargument exist here. His objections to the lack of a hearing on Defendants' Motion to Dismiss are meritless because neither party was entitled to oral argument. Regarding Harrison's contentions that "the statement relat[ing] to the subject matter" (presumably a reference to the Defendant's Motion to Dismiss) was "wrong" or unrelated to his claim and that the Court lacked "proper knowledge" of the claim, the Court finds no support for either allegation. The Defendants' Motion to Dismiss was directly related to Harrison's racial profiling claim. Harrison had the opportunity in his Response to counter the Defendants' legal and factual arguments, and the Court evaluated his Response with the leniency due a *pro*

³ See *Mortgage Elec. Registration Sys., Inc. v. Johnson*, 2007 WL 2792242, at *1 (Del. Super. Sept. 25, 2007).

⁴ *Id.*

se filing. Harrison has not identified what, precisely, was “wrong” in the Defendants’ “statements,” but regardless, the Court accepted all of Harrison’s well-pleaded allegations as true in evaluating Defendants’ Motion to Dismiss and drew all reasonable factual inferences in his favor. Harrison’s failure to state a claim was evident from the face of his Complaint. The Court therefore had “proper knowledge” upon which to render its decision. Thus, the instant Motion for Reargument would not have succeeded even if timely filed. Finally, if Harrison wishes to seek appellate review of this Court’s decision dismissing his claim, the Court cautions him that an untimely motion for reargument will *not* toll the running of the appeals period.⁵

6. For the foregoing reasons, Harrison’s Motion to Vacate Dismissal/Motion for Reargument is **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary
cc: Clarence Harrison, *pro se*
Erika Y. Tross, Esq.

⁵ See *McDaniel v. DaimlerChrysler Corp.*, 860 A.2d 321, 323 (Del. 2004).