

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

JERON D. BROWN, MICHAEL)
KELLAM and LEROY COLEY,)
Plaintiffs,)

v.)

C.A. No. 04C-10-213-PLA

DEPARTMENT OF CORRECTIONS)
CENTER'S WARDEN THOMAS)
CARROLL, DEPUTY WARDEN)
BETTIE BURRIS, TREATMENT)
ADMINISTRATOR RONALD)
HOSTERMAN, SECURITY)
SUPERINTENDENT'S HOLMAN and)
CUNNINGHAM, LEGAL SERVICE)
ADMINISTRATORS F. KOBUS and)
MIKE LITTLE,)
Defendants.)

Submitted: April 5, 2006
Decided: April 10, 2006

UPON DEFENDANT'S MOTION TO DISMISS
GRANTED.

Michael Kellam and Leroy Coley, Plaintiffs, *pro se*.

Eileen Kelly, Esquire, Wilmington, Delaware, for the Defendants.

ABLEMAN, JUDGE

The Court has considered Defendants' Motion to Dismiss, filed on March 1, 2006, as well as Plaintiffs' responses, filed March 17 and April 5, 2006, respectively. For the reasons stated herein, Defendants' Motion is **GRANTED**. Accordingly, Plaintiffs' Motion to Transfer Action to Chancery Court is **DENIED** as moot.

This civil rights action was filed by prisoners Jeron Brown ("Brown"), Leroy Coley ("Coley") and Michael Kellam ("Kellam"), alleging that the accommodations and religious services provided them in the pre-trial detention facility at the Delaware Correctional Center ("DCC") were inadequate. Brown, who is no stranger to bringing this sort of claim in court, took it upon himself to file a number of motions in this action. The other plaintiffs, Coley and Kellam, did not take part in these motions. In fact, Coley and Kellam have failed to take any role in the current litigation since the filing of the initial Complaint in October of 2004, and two subsequent motions for appointment of counsel and discovery of certain documents, filed in January of 2005.

In June of 2005, the Court revoked Brown's *In Forma Pauperis* Status, finding that Brown had filed more than three frivolous actions and was therefore prohibited from pursuing further litigation *in forma pauperis* under 10 *Del. C.* § 8805. When Brown failed to pay the court costs associated with his claim, he was dismissed from the action. Defendants now move to dismiss the action in its entirety due to the remaining Plaintiffs' failure to prosecute under Superior Court Civil Rule 41(b).

Rule 41(b) provides that a defendant may move for dismissal of an action where the plaintiff fails to prosecute his or her claim. Dismissal for failure to prosecute lies well within the sound discretion of the Court and provides a safeguard against delay and harassment.¹ A litigant must therefore actively pursue a case “from its inception through its resolution.”² Although Rule 41(b) does not specify a period of time that constitutes *prima facie* failure to prosecute, the Delaware Supreme Court has previously looked to the provisions of 41(e), which provides that the Court may dismiss an action *sua sponte* where no action has been taken in a case for one year.

In this case, Plaintiffs Coley and Kellam signed only the Complaint and the first two pleadings filed with the Court. The last time this Court heard from Coley and Kellam was January 18, 2005, more than one year ago. Coley contends that Brown was the “lead plaintiff” in this action, and the plaintiff with the “knowledge of the proceedings.” Plaintiff Kellam likewise argues that the motions filed and signed only by Brown are sufficient to maintain his own interest in this case.

It is well established that a non-attorney may not file on behalf of another litigant in the Courts of this State.³ Such assistance would constitute the unauthorized practice of law, which is clearly prohibited in Delaware.⁴ Therefore, all pleadings, motions and papers filed with the Court must be signed either by an attorney who is a member of the Delaware bar,

¹ *Park Ctr. Condo. Council v. Epps*, 723 A.2d 1195, 1198 (Del. Super. Ct. 1998).

² *Id.*

³ *Delaware State Bar Ass’n v. Alexander*, 386 A.2d 652 (Del. 1978).

⁴ *Jackson v. Div. of State Police*, 1991 WL 353828 (Del. Supr.).

or the *pro se* party.⁵ Therefore, while Brown may have been authoring the papers filed by the Court (and he apparently still is), all Plaintiffs must sign all of the documents. If the Plaintiffs are unable to sign joint filings, they cannot be permitted to maintain a joint cause of action.⁶ The Court further notes that no duty is imposed on the Court to determine whether all parties are properly represented.⁷

Brown was dismissed from this case more than six months ago, for failure to tender Court filing fees. Kellam and Coley have not appeared in this Court or otherwise acted to prosecute this case for more than one year. The Motion to Dismiss for Failure to Prosecute is therefore **GRANTED**.

Plaintiffs Motion to Transfer to Chancery Court is accordingly **DENIED** for mootness.

IT IS SO ORDERED.

PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary
cc: Eileen Kelly, Esquire
Michael Kellam
Leroy Coley

⁵ Supreme Court Rule 12; Superior Court Civil Rule 11.

⁶ See also *Dillard v. Washington*, 1996 WL 61664 (N.D.Ill.).

⁷ *Belfint, Lyons & Shuman, P.A. v. Pevar*, 2004 WL 2127217 (Del. Supr.).