

Order

Michigan Supreme Court
Lansing, Michigan

March 3, 2020

Bridget M. McCormack,
Chief Justice

160201(44)

David F. Viviano,
Chief Justice Pro Tem

JOSEPH WHITE,
Plaintiff-Appellant,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 160201
COA: 348605
Wayne CC: 11-011126-CZ

DETROIT EAST COMMUNITY MENTAL
HEALTH, MARILYN SNOWDEN, SHIRLEY
CALHOUN, DORIS STERRETT, and
GATEWAY COMMUNITY HEALTH
PROVIDER,

Defendants-Appellees.

On order of the Court, the motion for reconsideration of this Court's November 19, 2019 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).



a0224

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 3, 2020

Clerk

APPENDIX - D

Order

Michigan Supreme Court
Lansing, Michigan

November 19, 2019

Bridget M. McCormack,
Chief Justice

160201

David F. Viviano,
Chief Justice Pro Tem

JOSEPH WHITE,
Plaintiff-Appellant,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
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v

SC: 160201
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DETROIT EAST COMMUNITY MENTAL
HEALTH, MARILYN SNOWDEN, SHIRLEY
CALHOUN, DORIS STERRETT, and
GATEWAY COMMUNITY HEALTH
PROVIDER,
Defendants-Appellees.

On order of the Court, the application for leave to appeal the August 5, 2019 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.



pl118

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 19, 2019

Clerk

APPENDIX-C

Court of Appeals, State of Michigan

ORDER

Joseph White v Detroit East Community Mental Health

Docket No. 348605

LC No. 11-011126-CZ

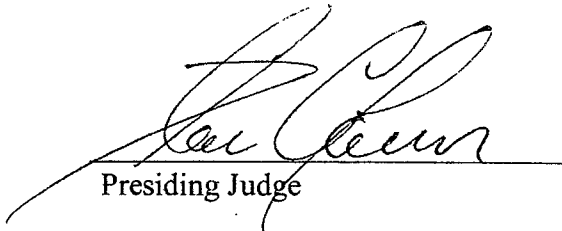
Thomas C. Cameron
Presiding Judge

Karen M. Fort Hood

Anica Letica
Judges

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

On its own motion, this Court finds sanctions warranted on the basis that plaintiff-appellant's pursuit of this appeal is frivolous and vexatious. MCR 7.216(C)(1). Plaintiff-appellant is ordered to pay the Clerk of this Court \$500 within 28 days of the date of this order. We direct the Clerk of the Court to return without accepting any further filings by or on behalf of Joseph White in any non-criminal matter until he has made the payment required by this order. MCR 7.216(A)(7).


Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 05 2019

Date


Chief Clerk

APPENDIX - A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JOSEPH WHITE,

Plaintiff,

-v-

Case No. 11-011126-CZ

DETROIT EAST COMMUNITY
MENTAL HEALTH, MARILYN SNOWDEN,
SHIRLEY CALHOUN, DORIS STERRETT, and
GATEWAY COMMUNITY HEALTH PROVIDER,

Hon. Muriel D. Hughes

Defendants.

**OPINION AND ORDER
DENYING PLAINTIFF'S THIRD MOTION FOR RELIEF
FROM JUDGMENT**

At a session of said Court held in the Coleman A.
Young Municipal Center, Detroit, Wayne County,
Michigan
on this: 4/3/2019

PRESENT: Muriel D. Hughes
Circuit Judge

This civil matter is before the Court on a motion for relief from judgment filed by Plaintiff, Joseph White, acting in *propria persona*. The Court notes that this motion is Plaintiff's third motion for relief from judgment. For the reasons stated below, the Court denies the motion.

I. BACKGROUND

This case arose out of Plaintiff's employment at Detroit East, Inc. Community Mental Health Center. Plaintiff's complaint alleged violations of the Whistleblower Protection Act, the Michigan Minimum Wage Law, and the Elliott-Larsen Civil Rights Act. On January 16, 2013, an

APPENDIX-B

order was entered by this Court's predecessor, the Hon. Amy Hathaway, granting summary disposition in favor of Defendant, Gateway Community Health Provider ("Gateway"), and dismissing Plaintiff's claims as to Gateway on the basis that Gateway was not Plaintiff's employer for the purposes of the alleged violations. On February 7, 2013, an order was entered dismissing Plaintiff's claims against the remaining Defendants and closing the case. Plaintiff appealed the dismissal to the Michigan Court of Appeals, which affirmed the dismissal by the Hon. Amy Hathaway. Plaintiff filed a motion for reconsideration, which the Michigan Court of Appeals denied on September 10, 2014. Plaintiff then filed an application for leave to appeal with the Michigan Supreme Court, which denied leave on March 31, 2015. On June 30, 2015, the Michigan Supreme Court also denied Plaintiff's motion for reconsideration.

Subsequently, on December 7, 2015, Plaintiff filed a Petition for Writ of Certiorari with the United States Supreme Court, which denied the Petition on January 11, 2016, as well as Plaintiff's Petition for Rehearing on March 7, 2016. Plaintiff then moved in this Court to have his original case reinstated and to have an order setting aside the dismissal of his case due to fraud upon the court. This Court denied Plaintiff's motion on May 3, 2016.

Plaintiff again sought appellate relief and the Michigan Court of Appeals denied his request for leave to appeal on August 12, 2016. His motion for reconsideration in the Michigan Court of Appeals was also denied on September 26, 2016. The Michigan Supreme Court then denied his application for leave to appeal the Michigan Court of Appeals' ruling on April 2, 2017.

On August 15, 2017, Plaintiff filed a motion for relief from judgment in this Court, which was denied. The Court held that the motion was untimely pursuant to MCR 2.612(C)(2). The

Court also held that Plaintiff failed to demonstrate fraud upon the Court and failed to explain how alleged newly discovered evidence indicates fraud upon the Court warranting relief from a final order of dismissal after a ruling on a motion for summary disposition. Plaintiff then filed a renewed motion for relief from judgment, which the Court denied on February 27, 2018. The Court of Appeals denied Plaintiff's application for leave to appeal on March 21, 2018. His application for leave to appeal was then denied by the Supreme Court on July 27, 2018. According to Plaintiff, he has filed his third petition for a Writ of Certiorari in the United States Supreme Court, which is still pending. The instant motion followed.

II. STANDARDS FOR DETERMINING MOTIONS FOR RELIEF FROM JUDGMENT

Under MCR 2.612, the court may relieve a party from a final judgment or order. The grounds for relief under MCR 2.612(C)(1) include:

- (a) Mistake, inadvertence, surprise, or excusable neglect.
- (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
- (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
- (d) The judgment is void.
- (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
- (f) Any other reason justifying relief from the operation of the judgment.

Under MCR 2.612(C)(1)(f), relief from a judgment may be grounded on "[a]ny other reason justifying relief from the operation of the judgment." To obtain relief from a judgment

pursuant to MCR 2.612(C)(1)(f), three requirements must be met: (1) the reason for setting aside the judgment may not fall under subsections (a)-(e), absent a showing that injustice would result were the judgment to stand; (2) the substantial rights of the opposing party may not be detrimentally affected; and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. *Heugel v Heugel*, 237 Mich App 471, 478-79; 603 NW2d 121 (1999). “Generally, relief is granted under subsection (f) only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered.” *Id.* at 479. Furthermore, the “motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken.” MCR 2.612(C)(2).

III. ANALYSIS

In Plaintiff’s renewed motion for relief of judgment, Plaintiff again makes the same claims as his earlier motions for relief from judgment, which the Court has already ruled on. In the instant motion, he reiterates his previous claims that the abuse toward pro se litigants “only benefits people in administrative authority.”

He again argues that the abuse was conducted with malice and constitutes fraud upon the Court. He also again alleges that there was fraud in the Court’s Register of Actions. Plaintiff has failed to point to any specific instance of “fraud” contained in the Register of Actions. All actions taken in this case were properly noted in the Register of Actions. Plaintiff also again asserts that he never dismissed the instant case and that the Register of Actions shows that this case was dismissed. The Plaintiff’s argument that the case has not been dismissed because he did not dismiss it is meritless because, once a defendant has responded to the complaint, the plaintiff

has no authority to dismiss the case. Only the Court can do this by order. MCR 2.504(A)(2). As this Court has explained in its prior opinion, a case may be dismissed by the Court under MCR 2.504(B)(2). The court on its own initiative may dismiss a case which has been tried without a jury “on the ground that, on the facts and the law, the plaintiff has no right to relief.” MCR 2.504(B)(2).

As indicated above, on January 16, 2013, an order was entered by Judge Hathaway, granting summary disposition in favor of Defendant, Gateway, and dismissing Plaintiff’s claims as to Gateway. In addition, on February 7, 2013, Judge Hathaway entered an order dismissing Plaintiff’s claims against the remaining Defendants and closing the case. Plaintiff is barred by res judicata to raise this issue again because there has been a prior decision on its merits on the same issue of fraud in the Register of Actions in this case.

This Court has also previously denied Plaintiff’s first motion for relief from judgment on the basis that the motion was untimely and that Plaintiff failed to demonstrate that any alleged newly discovered evidence demonstrated fraud on the Court. Plaintiff’s first motion for relief from judgment was filed over four years later. Pursuant to MCR 2.612(C)(2), this Court held that the motion was not filed timely as to the allegation of fraud or newly discovered evidence, nor was it filed within a reasonable period of time as to any other allegation. Thus, this Court has ordered that the case remain in closed status and that the Court’s predecessor entered an order dismissing the case. Again, Plaintiff is barred by res judicata to raise the same issue again because there has been a decision on the merits in this case.

In addition to Plaintiff’s earlier arguments, he makes two claims: (1) that certain laws of nature provide a basis to reverse the Court’s earlier decision and those laws as they pertain to

fraud are supported by several cases from Illinois and a few federal cases; and (2) that this Judge must be disqualified from presiding over Plaintiff's case due to bias.

The Court has previously ruled that relief of judgment is without merit and that the purported newly discovered evidence does not demonstrate fraud upon the Court or warrant relief of a final order of dismissal subsequent to a ruling on a motion for summary disposition. Again, Plaintiff is barred by res judicata to raise the same issue again as to fraud because there has been a decision on the merits in this case.

Plaintiff next seems to tie his claim of "fraud upon the Court" to fraud committed by "officers of the court." It appears that this would include judges, specifically the judge in this Court. He intimates, but does not directly state, that this Court is biased and, as a result, any determination by the Court is fraudulent.

With respect to the disqualification of a judge, under MCR 2.003(C)(1)(a), a party may move to disqualify the judge if the judge is biased or prejudiced against a party or attorney. A trial judge is presumed to be impartial, and the party asserting partiality has the heavy burden of overcoming that presumption. *Coble v Green*, 271 Mich App 382, 390; 722 NW2d 898, 904 (2006), citing *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996); See also, *B & B Investment Group v Gitler*, 229 Mich App 1, 17; 581 NW2d 17 (1998). A party challenging a judge's impartiality must show a "deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg v Rochester Lodge No 2225 of Benevolent and Protective Order of Elks of USA*, 228 Mich App 20, 39; 577 NW2d 163 (1998). As a general rule, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.

Liteky v United States, 510 US 540, 555; 114 S Ct 1147; 127 L Ed 2d 474 (1994). Moreover, criticism and even hostility do not serve as bases for disqualification. *Id.*

Specifically, Plaintiff asserts, “If you are non-represented litigant, and should the court not follow the law as to nonrepresented (sic) litigants, then the judge has expressed an ‘appearance of partiality’ and, under the law, it would seem that he/she has disqualified him/herself.” [Plaintiff’s Brief, p. 9]. As to the “appearance of partiality,” under MCR 2.003(C)(1)(b), disqualification of a judge is warranted when “[t]he judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, [556 US 868]; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.” Under Canon 2 of the Michigan Code of Judicial Conduct, a judge must “avoid the appearance of impropriety.” Code of Judicial Conduct, Canon 2(A). The more relevant and specific dictates of Canon 2 are as follows:

B. A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person’s race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.

C. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not use the prestige of office to advance personal business interests or those of others, ...

Code of Judicial Conduct, Canon 2(B) and (C).

To summarize, under Canon 2, the Court should follow the law and apply it impartially, the Court should treat all people with courtesy and respect, the Court should not allow family or

friends to influence decision making, and the Court should not use the prestige of the office to advance business or personal interests.

In the instant case, the Court has not engaged in any activity prohibited under either MCR 2.003 or Canon 2. Nor has Plaintiff indicated specifically what activity the Court has engaged in which would demonstrate the appearance of impropriety. Plaintiff has not provided the Court with a factual predicate for his claim of the appearance of partiality or impropriety. “A party may not leave it to (sic) Court of Appeals to search for the factual basis to sustain or reject its position, but must support its position with specific references to the record.” 7A Mich Pl & Pr § 57:36 (2d ed), citing *Begin v Michigan Bell Telephone Co*, 284 Mich App 581; 773 NW2d 271 (2009). See also *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 424; 576 NW2d 667 (1998) (“A party may not leave it to this Court to search for a factual basis to sustain or reject its position.”). In addition, Plaintiff has not requested disqualification, but merely asserts that the appearance of partiality renders any judgment made in this case fraudulent.

The only activity this Court has engaged in is ruling on the various matters associated with this case. Any rulings against Plaintiff cannot be said to show the appearance of impropriety or actual bias. *Liteky, supra*. Moreover, other than ruling against him, Plaintiff has failed to point to any specific instance demonstrating a “deep-seated favoritism or antagonism that would make fair judgment impossible.” *Schellenberg, supra*. Therefore, his claim that the Court did not follow the law or exhibited the appearance of partiality or impropriety is without merit.

IV. CONCLUSION

Plaintiff has failed to demonstrate entitlement to relief from judgment pursuant to MCR 2.612(C)(1). As this Court has previously ruled on Plaintiff's prior motions, Plaintiff's motion does not demonstrate fraud upon the Court or warrant relief from a final order of dismissal subsequent to a ruling on a motion for summary disposition. Plaintiff's renewed motion is also untimely pursuant to MCR 2.612(C)(2) and barred by res judicata because there have been prior decisions on the merits in this action regarding the motion for relief from judgment based on fraud. Nor has he carried his burden to overcome the presumption that the Court is fair and impartial. *Coble, supra*. He has failed to show that the Court is biased or has engaged in any activity resulting in the appearance of partiality or impropriety, which would warrant relief from the Court's final order of dismissal of Plaintiff's case. Finally, Plaintiff has exhausted all of his remedies at law and is barred from filing future motions for relief from judgment based on fraud.

On the basis of the foregoing opinion, Plaintiff's third motion for relief from judgment is hereby **DENIED WITH PREJUDICE** and the case remains in closed status.

IT IS SO ORDERED.

DATED:

/s/ Muriel D. Hughes 4/3/2019
Circuit Judge