

STATE OF MICHIGAN
IN THE COURT OF APPEALS

SHERRY LOAR,

Plaintiff,

Court of Appeals No: 294087

v

MICHIGAN DEPT. OF HUMAN SERVICES
and ISMAEL AHMED, in his official
capacity as Director of the Michigan Dept.
of Human Services,

Defendants.

**DEFENDANTS' ANSWER TO PLAINTIFF'S MOTION
FOR RECONSIDERATION**

Respectfully submitted,

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Dated: October 15, 2010

Introduction

This case has been briefed on several occasions and this Court is well-apprised of the issues the parties have raised. Once again, Plaintiffs ask that this Court for a "full explanation,"¹ characterizing most of this Court's decision as "boilerplate."² Despite having had their claim rejected for a second time in this Court, Plaintiffs once again ask for reconsideration so that they may have another bite at the apple. With all due respect, Plaintiffs numerous bites have already reduced the apple to a core and they have failed to demonstrate any basis for this court to reconsider its September 22, 2010 decision. Reconsideration may be granted if the moving party demonstrates a palpable error by which the court and the parties have been misled and shows that a different disposition must result from correction of the error. In this case, Plaintiffs have neither alleged nor established the required grounds for reconsideration. Reconsideration, therefore, must be denied.

Argument

A. Reconsideration must be denied because Plaintiffs have neither alleged nor established the required grounds for reconsideration.

This Court decides motions for reconsideration of an order pursuant to MCR 7.215(I)(1), which expressly incorporates the standard set forth in MCR 2.119(F)(3). The language of MCR 2.119(F)(3) restricts the grounds for reconsideration to new issues creating an outcome determinative palpable error which misled the parties and the Court:

Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

¹ Plaintiffs' Brief in Support of Motion for Reconsideration, at p 10.

² Plaintiffs' Brief in Support of Motion for Reconsideration, at p 1.

These restrictions are fully consistent with principles expressed in a line of judicial decisions going back more than 100 years. It is an ancient rule in Michigan that a rehearing should not be granted unless there has been a serious misapprehension of facts or a fundamental misapplication of controlling legal principles. As the Court stated in *Brown v Brown*³:

[A] rehearing on the same facts and legal controversy is not properly to be granted, unless there has been some very peculiar assumption or defect on the first hearing, by which Court and parties have been misled. The case must be an extraordinary one in which an appellate court can properly revoke its decision on any other ground. It is to be expected that counsel will always present in one argument what there is to be presented, and the Court will act on the whole record, or so much of it as is material.

If the rule was otherwise, rehearing would be sought in every case, as the Court recognized in *Nichols v Marsh*⁴:

A motion is made in this case for a rehearing on the ground of general and particular misapprehension of the record, and of the rights of the parties. We discover no point which was not presented and considered on the original argument, and nothing, therefore, to call for a rehearing which would not authorize a similar application in any case where the opinion disappoints one or the other of the parties, as it must do inevitably.

Similarly, in *Thompson v Jarvis*, the Court observed that a rehearing should not be granted simply because an opinion does not contain a discussion of every issue raised in the case, and reiterated the narrow circumstances in which a rehearing might be appropriate⁵:

It is questionable how far rehearing can be allowed on alleged mistakes of judgment in an appellate court, but they must generally be denied whether a possible authority exists or not to grant them, unless new evidence has been found since the decision of the case, of such a nature as to require consideration.

In sum, there are four requirements to demonstrate adequate grounds for reconsideration.

A party must first raise an issue that does not present the same issues on which the Court ruled.⁶

Although at first blush this seems to mean a party need only raise an issue that it did not

³ *Brown v Brown*, 64 Mich 82, 83; 32 NW 663 (1887).

⁴ *Nichols v Marsh*, 62 Mich 439, 440; 29 NW 37 (1886).

⁵ *Thompson v Jarvis*, 40 Mich 526 (1879).

⁶ MCR 2.119(F)(3); *Brown*, 64 Mich at 83.

previously raise, a careful analysis of the court rule and case law shows that a party must present issues that either could not have been raised before or some previously unnoticed and compelling defect. That is, a party must raise a previously unknown defect in the record⁷ or proceedings,⁸ previously undiscovered evidence,⁹ an intervening change in the law,¹⁰ or a compelling issue that has somehow eluded both the parties and the courts. Otherwise, parties would be rewarded for their own negligence by being allowed to raise issues that they should have raised earlier.

Second, a party seeking reconsideration must show that a palpable error occurred in the Court's prior decision.¹¹ Third, a party must show that the palpable error misled both the parties and the Court.¹² Finally, a party must demonstrate that "a different disposition" would result from correcting the error; that is, the party must show that the error was outcome determinative.¹³

Plaintiffs have not alleged, let alone proven, any of these requirements. The arguments they presently raise could have been presented in their Complaint, their Amended Complaint or in any of the several pleadings and briefs they filed in this Court or the Michigan Supreme Court. The relevant law has not changed in the three weeks between this Court's September 22, 2010 Order and Plaintiff's Motion, no defect in the record or proceedings has been demonstrated, and no previously undiscovered evidence has been offered.

⁷ *Nichols*, 62 Mich at 440.

⁸ *Brown*, 64 Mich at 83.

⁹ *Thompson*, 40 Mich 526.

¹⁰ *Michigan Bank-Midwest v D J Reynaert, Inc*, 165 Mich App 630, 645; 419 NW2d 439 (1988), citing *Brown v Northville Regional Psychiatric Hospital*, 153 Mich App 300, 309; 395 NW2d 18 (1986), citing Martin, Dean & Webster, *Michigan Court Rules Practice*, Rule 2.119, 537.

¹¹ MCR 2.119(F)(3).

¹² *Id.*

¹³ *Id.*

Plaintiffs have also failed to allege any palpable error. Plaintiffs likewise do not allege that the palpable error misled the parties and the Court. Finally, Plaintiffs do not argue or show that the error was outcome determinative in the present case. Instead, they offer the same arguments that have failed to convince this Court in the past. Accordingly, this Court should deny Plaintiffs' request for rehearing because they fail to demonstrate the four requirements necessary to demonstrate adequate grounds for reconsideration.

B. Reconsideration must be denied because Plaintiffs are not asking this Court to reconsider its ruling but instead ask this Court to explain its Order, a request not covered by MCR 7.215(I).

Plaintiffs once again ask this Court for a "full explanation,"¹⁴ characterizing most of this Court's September 22, 2010 decision as "boilerplate."¹⁵ Not only is such a request outside the scope of either MCR 7.215(I) or MCR 2.119(F)(3), but this Court's explanation was full, complete and succinctly informed Plaintiffs of the myriad of deficiencies in their case. In any case, DHS does not believe that any portion of this Court's decision should be characterized as "boilerplate."

Plaintiffs' other arguments contain similar flaws. Plaintiffs raise a policy argument, using Michigan's depressed economy as a crutch to support their claim. This policy does not constitute a basis for reconsideration under the applicable court rules. Plaintiffs also provide selected quotations from various publications, many of which merely echo the sentiments of Plaintiffs' own media campaign. These arguments lack any appreciable merit and should be rejected.

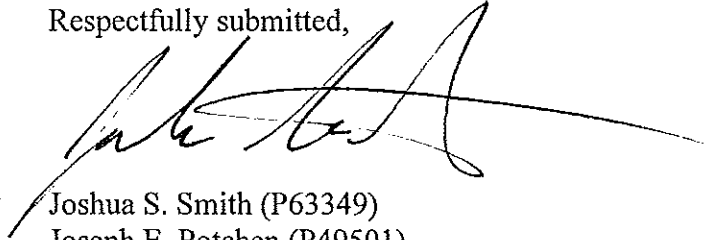
¹⁴ Plaintiffs' Brief in Support of Motion for Reconsideration, at p 10.

¹⁵ Plaintiffs' Brief in Support of Motion for Reconsideration, at p 1.

Conclusion and Relief

Because Plaintiffs have neither alleged nor established the required grounds for reconsideration and their reasoning is spurious, their request for reconsideration must be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joshua S. Smith', with a long horizontal flourish extending to the right.

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