

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

DAVID J. BUCHANAN, : C.A. No. 08M-02-012 RFS
Petitioner/Respondent¹ :
 :
v. :
 :
THOMAS E. GAY :
JAMES B. TYLER :
GLYNIS GIBSON :
Respondents/Defendants. :

ORDERS REGARDING MOTION TO PROCEED *IN FORMA PAUPERIS*
AND UPON REVIEW OF PETITION

1) On February 25, 2008, David J. Buchanan (“petitioner”) filed a “Verified Petition to Perpetuate Testimony” and a motion to proceed *in forma pauperis*. This is my decision on the pending matters.

2) The affidavit petitioner has filed establishes he is indigent. Thus, I grant the motion to proceed *in forma pauperis*. Now, the Court must review the complaint and allow the litigation to proceed only if it finds the action is not legally frivolous or malicious. 10 Del. C. § 8803(b).

3) The respondents whom petitioner has named in this matter are Thomas E. Gay, James B. Tyler, and Glynis Gibson. Mr. Gay and Ms. Gibson currently are practicing law while Mr.

¹David J. Buchanan cannot be a “respondent” in this action. He is either a petitioner or a plaintiff.

Tyler is not.

4) Pertinent to the pending petition is petitioner's litigation history.

Petitioner has been involved in a very litigious divorce proceeding, which included the division of marital property. Bennett v. Bennett, Del. Supr., No. 73, 2007, Ridgely, J. (August 6, 2007). The Family Court ordered that the marital home and a farm be sold, and petitioner was evicted from these two parcels of marital real estate. Id. at 1. Petitioner's apparent refusal to comply with the Family Court order appears to have led to his recent arrest on criminal charges which are pending in this Court. State v. Buchanan, Def. ID# 0801031784.

A bankruptcy action petitioner filed was dismissed with prejudice. Bennett v. Bennett, supra at 2.

Petitioner previously has sued Mr. Gay and his law firm, alleging defamation, violation of his civil rights, and breaches of ethical duties established by the Delaware Lawyers' Rules of Professional Conduct, which claims allegedly arose from Mr. Gay's representation of petitioner's ex-wife during the above-referenced Family Court matters. The Superior Court dismissed each claim and the Supreme Court affirmed those decisions. Buchanan v. Gay, Del. Super., C.A. No. 06C-01-002, Johnston, J. (Sept. 21, 2006), rearg. den., (Oct. 13, 2006), aff'd, Del. Supr., No. 562, 2006, Berger, J. (May 17, 2007). Significantly, because the Superior Court found petitioner had abused the judicial process by filing frivolous or malicious litigation, it ruled as follows:

All subsequent filings and any further application to this Court relating to this case shall be subject to the requirements of 10 Del. C. § 8803(e). 6

6 (e) When a Court finds that a litigant has abused the judicial process by filing frivolous or malicious litigation, the Court may enjoin that litigant from filing future claims without leave of court. When so enjoined, any future requests to file claims must be accompanied by an affidavit certifying that

(1) The claims sought to be litigated have never been raised or disposed of

before in any court;

(2) The facts alleged are true and correct;

(3) The affiant has made a diligent and good faith effort to determine what relevant case law controls the legal issues raised;

(4) The affiant has no reason to believe the claims are foreclosed by controlled law; and

(5) The affiant understands that the affidavit is made under penalty of perjury.

Buchanan v. Gay, Del. Super., C.A. No. 06C-01-002, Johnston, J. (Sept. 21, 2006) at 11-12.

Petitioner previously has attempted to obtain relief from decisions of the Family Court by filing legally meritless actions in the Supreme Court, In re Buchanan, Del. Supr., No. 530, 2007, Ridgely, J. (Nov. 14, 2007); Chancery Court, Buchanan v. Buchanan, Del. Ch., No. 2190, Chandler, C. (May 31, 2006); and this Court, Buchanan v. Buchanan, Del. Super., C.A. No. 06C-06-041, Bradley, J. (July 7, 2006).

5) The Rules of this Court require that a pleading “contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the party deems itself entitled.” Super. Ct. Civ. R. 8(a). Additionally, the Rules require that “[e]ach averment of a pleading shall be simple, concise, and direct.” Super. Ct. Civ. R. 8(e)(1).

6) Petitioner makes various allegations, many of which misrepresent the facts regarding the Family Court ejectment order and the state of the bankruptcy proceeding. For the most part, the allegations against the respondents are unclear. The Court dismisses the unclear claims. The only clear statement of a claim and demand for judgment is petitioner’s claim and demand for a “Bill to Perpetuate Testimony.” Petitioner asserts he desires the Bill to Perpetuate Testimony to call past and present legal counsel in matters closely related to these proceedings to

provide Discovery, and disclose matters, where Plaintiff has little if no proof without disclosure of counsel, and will have little if no remedy at law which effects title to land, property boundary, and loss of equity that has occurred, at the hand of Respondents, where clients of Respondents have caused to have removed all potential evidence, documentation and electronic records from the possession of Plaintiff, to interfere with litigation and the administration of equitable justice, and where Defendants have not complied with subpoena to provide or return such information in other courts.

7) Unlike the Court in Chancery, the Superior Court never had the power to grant a bill to perpetuate testimony; it has never had the power to allow depositions unless an action was pending. Levy v. Kirby, 192 A. 696, 699 (Del. Super. 1937). The Superior Court rules reflect that state of the law. In Superior Court Civil Rule 30(a), it is provided in pertinent part:

When depositions my be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination.²

8) Because this Court has no jurisdiction to grant a bill to perpetuate testimony and because no claim is pending against respondents, petitioner is not entitled to depose them. Thus, his petition must be dismissed as legally meritless.

9) I further find that this petition is malicious. Petitioner clearly has misrepresented facts. He, again, is seeking to attack judgments of the Family Court by filing a completely meritless petition in this Court. This is the second time he has filed meritless claims against Mr. Gay.

NOW, THEREFORE, THIS 10th DAY OF MARCH, 2008, IT IS HEREBY ORDERED

²Of course, the deposition must be “regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action....” Super. Ct. Civ. R. 26(b)(1).

AS FOLLOWS:

1) The petition to proceed *in forma pauperis* is GRANTED.

2) The petition is DISMISSED as legally meritless and as malicious.

3) Because petitioner continues to file frivolous and malicious complaints with this Court, he may not file any further complaint against any party on any ground without complying with 10 Del. C. § 8803(e). Failure to comply with that statute shall result in an automatic dismissal of the pleading without any further review. This order applies to any pleadings petitioner might file with the Superior Court in each county and shall be distributed to the Prothonotarys of each County.

Richard F. Stokes

cc: Prothonotary, Sussex County
Prothonotary, Civil Unit
Prothonotary, NCC
Prothonotary, Kent County
David Buchanan
Thomas E. Gay, Esquire
Glynis Gibson, Esquire
James B. Tyler