

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-053929

11/30/2020

HONORABLE THEODORE CAMPAGNOLO

CLERK OF THE COURT

G. Chavez

Deputy

SKY BOLES

SKY BOLES

3307 W ECHO LN

PHOENIX AZ 85051

v.

JASON TARRELL, et al.

MARY T HONE

KATHRYN A BATTOCK

TROY B STRATMAN

MARK ZINMAN

JUDGE CAMPAGNOLO

MINUTE ENTRY

The Court has reviewed and considered Plaintiff's Accelerated Motion to Vacate, Plaintiff's Amended Accelerated Motion to Vacate Order Granting Summary Judgment Dismissing Plaintiff's Claim, Defendants Joint Notice of Non-Filing, and the applicable law.

The oral arguments hearing on Defendant's Motion for Summary Judgment was held on October 9, 2020. Plaintiff failed to appear at that hearing. Based on the summary judgment evidence and Defendant's oral arguments, the Court granted summary judgment at the conclusion of the hearing.

The Motions to Vacate seek reconsideration under Rule 60(b)(1) for excusable neglect. A non-lawyer filed the above Motions on behalf of Plaintiff, claiming that the latter was unable to attend the oral arguments hearing, and unable to file the Motions due to a head trauma. The Motions referenced a police report, but a copy of that report was not attached to the Motion.

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First of all, a non-lawyer may not appear on behalf of a party litigant. Second, the only evidence presented by the non-lawyer was a copy of a purported doctor's note dated October 13, 2020 that said Plaintiff could not drive or work due to a "recent" head trauma. There was nothing in the note that prevented Plaintiff from speaking on the telephone or appearing by video. Third, the purported doctor's note did not contain any type of medical terminology or prognosis, which might be expected from a medical physician. Fourth, the oral arguments hearing was held on October 9, 2020, and the doctor's note, dated October 13, 2020, did not specify when the alleged head trauma occurred. The Motions stated that the alleged head trauma occurred on October 1, 2020. If so, Plaintiff or her non-lawyer representative had more than ample time to notify the Court prior to the hearing. That was not done. In light of the circumstances, and without any evidence to support the claim that the alleged injury occurred on October 1, 2020, it is just as believable that the alleged head trauma could have occurred after the oral arguments hearing, if it occurred at all.

To obtain relief under Rule 60(b)(1), Plaintiff has the burden to show (1) mistake, inadvertence, surprise or excusable neglect; (2) that relief was sought promptly; and (3) that a meritorious claim existed. *Copeland v. Arizona Veterans Memorial Coliseum and Exposition Center*, 176 Ariz. 86, 89 (App. 1993).

Plaintiff has failed to prove excusable neglect, and has failed to show that a meritorious claim existed. The Court finds that there is insufficient evidence to grant relief to Plaintiff under Rule 60(b)(1). The Court's Ruling granting summary judgment to Plaintiff on October 9, 2020 remains in full force and effect.

Plaintiff also requested a stay under Rule 62. Having denied the Rule 60(b)(1) Motion, there are no grounds for a Rule 62 Stay.

IT IS ORDERED that Plaintiff's Accelerated Motion to Vacate, and Plaintiff's Amended Accelerated Motion to Vacate Order Granting Summary Judgment Dismissing Plaintiff's Claim are denied.

IT IS FURTHER ORDERED that Plaintiff's request for a Rule 62 Stay is denied as moot.

/ s / HONORABLE THEODORE CAMPAGNOLO

HON. THEODORE CAMPAGNOLO
JUDGE OF THE SUPERIOR COURT