

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL, an individual

Plaintiff,

v

Case No. 13-3468-CK

RMD PROPERTIES, LTD., a Michigan corporation

Defendant.

OPINION AND ORDER

Plaintiff has filed a motion for reconsideration pursuant to MCR 2.119(F). Plaintiff challenges the Court's Opinion and Order, dated March 7, 2014, denying his motion to disqualify attorney Lawrence M. Scott and O'Reilly Rancilio, P.C.

Facts and Procedural History

This matter arises from a group of cases filed within this Court familiarly known as DeMil 1-4, all arising from Michael DeMil's ("M. DeMil") and Robert DeMil's ("R. DeMil") differences pertaining to their management and ownership in Nationwide Construction and their jointly owned companies.

On March 24, 2014, Mr. Scott and O'Reilly Rancilio, P.C. ("O'Reilly") filed an Appearance in the instant case on behalf of Defendant, RMD Properties, Ltd. Plaintiff subsequently filed a motion to disqualify O'Reilly. In support of his motion, Plaintiff contended that in 2011, he consulted with attorney Larry Scott and other attorneys at O'Reilly, and discussed his rights and responsibilities in his efforts to separate his interests from R. DeMil in their jointly owned companies. Additionally Plaintiff contends that he received an invoice from

O'Reilly for documents that were prepared on his behalf in regards to Nationwide Construction. Plaintiff and O'Reilly subsequently resolved the payment of the invoice and parted ways. On April 16, 2014, Plaintiff moved to have O'Reilly disqualified from representing Defendant because he was their former client and because they advised him regarding at least one of their jointly owned companies at issue.

This court heard oral arguments on April 25, 2014 in connection with Plaintiff's motion to disqualify O'Reilly. On March 7, 2014, this Court entered an Opinion and Order in which it held that Plaintiff failed to demonstrate how he would be prejudiced by O'Reilly's representation; consequently, this Court denied Plaintiff's motion.

Plaintiff has now filed this instant motion for reconsideration of the Court's May 7, 2014 order.

Standard of Review

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). 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. MCR 2.11(F)(3). A motion for reconsideration that merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbrooke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

Arguments and Analysis

In support of his motion, Plaintiff contends that this Court committed a palpable error by finding that “M. Demil fail[ed] to set forth specifically how he will be prejudiced by [O’Reilly’s] Representation.” *Opinion and Order* dated May 7, 2014 at pg. 2. Specifically, Plaintiff argues that the court incorrectly relied on the standard in *Kubiak v. Hurr*, 143 Mich App 465, 372 NW2d 341 (1985) that states that a moving party must show “actual prejudice” to disqualify an attorney. Additionally plaintiff contends that the appropriate standard is contained in MRPC 1.9 not *Kubiak*.

In his motion, Plaintiff contends that *Kubiak* is no longer applicable as MRPC 1.9 has been amended since that decision. However, even if the precedential effect of *Kubiak* were otherwise effected by the subsequent amendment of MRPC 1.9, the Michigan Supreme Court and Michigan Court of Appeals have, subsequent to the amendment, continued to affirm and cite to the holding in *Kubiak* that: “[t]he party seeking disqualification bears the burden of demonstrating specifically how and as to what issues in the case the likelihood of prejudice will result.” See also: *People v Parsons*, 477 Mich 1065; 728 NW2d 863 (2007); *Ryman v Baergen*, 262 Mich App 274, 319; 686 NW2d 241 (2004). Further, disqualification motions are disfavored and should not be granted absent prejudice to a party or interference with the administration of justice. *Id.*

In his motion, Plaintiff fails to show how Defendant’s counsel’s participation prejudices him in this case. Plaintiff has presented no evidence that the Defendant’s counsel used any confidential information obtained through its prior representation to his disadvantage. The parties, which could be influential for these matters, argue whether O’Reilly through its representation, obtained Plaintiff’s information. However, Plaintiff failed to demonstrate how O’Reilly’s access

JCF/sr

Cc: *via e-mail only*

Benjamin J. Aloia, Attorney at Law, aloia@aloiaandassociates.com

Jonathan B. Eadie, Attorney at Law, jbelaw@hotmail.com

Rogue Tyson, Attorney at Law, rtyson@nationwidecos.com

Edward J. Hood, Attorney at Law, ehood@clarkhill.com

Theresa Lloyd, Attorney at Law, tloyd@plunkettcooney.com

Anthony Vittiglio, II, Attorney at Law, avittiglio@ddp-law.com