

DOCKET NO: NNHCV136040736S

SUPERIOR COURT

DESMOND, SANDHYA

JUDICIAL DISTRICT OF NEW HAVEN
AT NEW HAVEN

V.

YALE-NEW HAVEN HOSPITAL, INC. Et
Al

3/4/2016

ORDER

ORDER REGARDING:

05/07/2015 169.00 REQUEST TO REVISE

The foregoing, having been considered by the Court, is hereby:

ORDER:

The pending request to revise, and objections thereto, come to the court in an unusual procedural posture. A complete recitation of the lengthy procedural history of this case is unnecessary, but it will be useful to review the key litigation events leading to the present situation.

Plaintiff Sandhya Desmond sustained significant personal injuries in 2004 as a result of a spill-related fall occurring during the course of her employment at Yale New-Haven Hospital. She filed a workers' compensation claim, became deeply dissatisfied with numerous aspects of the workers' compensation proceedings, and, after an unsuccessful effort to obtain redress in federal court, ultimately filed a lawsuit in state court against her employer and its third-party medical plan administrator. That lawsuit pursued various causes of action relating to an alleged campaign of bad faith, fraud, and associated wrongdoing perpetrated by defendants for the purpose of hindering, delaying, derailing, defeating, and otherwise interfering with plaintiff's ability to obtain necessary medical treatment and related benefits in the processing of her workers' compensation claim. The lawsuit was dismissed by the trial court based on the exclusivity provision of the workers' compensation act, General Statutes Section 31-284(a). The judgment was affirmed on appeal. See 138 Conn. App. 93, cert. denied, 307 Conn. 942 (2012).

The present case was filed in 2013. Plaintiff contends that the claims, as formulated here, correct the pleading deficiencies resulting in the dismissal of the prior case. Defendants, holding a contrary view, moved to strike the complaint, as amended. See Docket Entry #119.00. Judge Nazzaro agreed with defendants and granted the motion to strike on November 26, 2104. See Docket Entry #144.00.

On December 11, 2014, plaintiff filed a substituted complaint, as was her right under Practice Book 10-44. After additional litigation involving plaintiff's (ultimately unsuccessful) effort to amend the substituted complaint, defendants filed the pending request to revise, Docket Entry #169.00. Plaintiff's objection appears at Docket Entry ##175.00-177.00.

For all practical purposes, defendants' request to revise is intended to function as a motion to strike (or dismiss) the substituted complaint. Defendants argue that the allegations of the substituted complaint fail to cure the deficiencies of the original complaint, and they are therefore entitled to have the entire complaint 'revised' by 'deletion' under established case law. See e.g., *Royce v. Westport*, 183 Conn. 177, 180 (1981); *Good Humor Corp. v. Ricciuti*, 160 Conn. 133, 137 (1960) (motion to expunge); see also *Perugini v. Giuliano*, 148 Conn. App. 861, 877 n.10 (2014).

This court agrees with defendants that a request to revise is a proper vehicle to obtain the relief requested under the present circumstances. (A motion to dismiss might be the preferred mechanism, because the underlying issue is whether the lawsuit is barred by the exclusivity provision of the workers' compensation act, which implicates the court's subject matter jurisdiction.) The important point is that

all parties have had a full and fair opportunity to brief and argue any and all issues relating to the legal sufficiency of the substituted complaint, and no prejudice would result to any party as a result of the procedure followed here.

This court has reviewed the relevant documents carefully. These include, without limitation, the Appellate Court decision in plaintiff's prior lawsuit; the original complaint, as amended, in the present action (hereinafter, for simplicity, 'the original complaint'); the substituted complaint in this action; Judge Nazzaro's memorandum of decision striking the original complaint; and all of the memoranda and other filings, submitted by any party, relating to the pending request to revise and objection thereto. The court also has read the relevant statutes and case law bearing on the issues presented.

The court hereby overrules plaintiff's objections to the requested revision, and dismisses the lawsuit. This ruling is based on the following considerations.

First, it is the court's opinion that the substituted complaint is not, in substance, materially different from the original (stricken) complaint. In other words, the new allegations in the substituted complaint do not cure the legal deficiencies that caused Judge Nazzaro to strike the original complaint. The substituted complaint contains many more pages of allegations, but those allegations, in this court's view, do not change the nature or character of the underlying claims in a manner that would alter the outcome of Judge Nazzaro's memorandum of decision striking the original complaint.

Second, this court does not feel that it is appropriate, under the present circumstances, to second-guess Judge Nazzaro's analysis as set forth in the November 26, 2014 memorandum of decision. The law of the case doctrine does not require this court blindly to follow Judge Nazzaro's ruling, but it advises caution before changing course regarding issues of law previously decided in the same case, see *Breen v. Phelps*, 186 Conn. 86, 99-100 (1982). This court will not 'overrule' the legal determinations contained in Judge Nazzaro's memorandum of decision because the court is not 'convinced' that Judge Nazzaro's earlier decision was 'clearly erroneous,' *id.* If plaintiff wishes to challenge the legal analysis and conclusions contained in Judge Nazzaro's decision, she will need to seek relief in an appellate tribunal. This point should not be interpreted as an act of mere collegial deference. The administration of justice in our trial courts would be seriously impaired if a party could avoid the effect of an adverse ruling simply by taking another crack at the same legal argument before a different judge.

Third, because plaintiff insists so strenuously that Judge Nazzaro's earlier ruling is erroneous as a matter of law, this court has reviewed for itself whether the claims stated in the substituted complaint survive the legal standard applied by the Appellate Court decision in plaintiff's prior lawsuit. The ultimate question, after all, is whether the substituted complaint in the present case states one or more causes of action in light of the holding of the Appellate Court in that prior lawsuit. The Appellate Court decision, following the Supreme Court decision in *DeOliveira v. Liberty Mutual Insurance Co.*, 273 Conn. 487 (2005), establishes what appears to be a very high threshold for this (or any other) plaintiff to overcome the exclusivity provision of the workers' compensation statute based on allegations of misconduct by the employer in connection with workers' compensation proceedings. In light of the prior Appellate Court decision involving this same plaintiff, this court does not believe that plaintiff's allegations in the substituted complaint can be said to meet that standard. Nothing in plaintiff's repeated references to General Statutes § 52-564 changes that conclusion.

The court wishes to state that nothing herein is intended to disparage or trivialize the seriousness of plaintiff's allegations of wrongdoing. The allegations of litigation misconduct in connection with the workers' compensation matter are extremely serious in nature. If they are true, it is virtually inconceivable that an employer would be able to perpetrate such wrongdoing with impunity. The question before this court, however, is whether the Connecticut legislature has vested the superior court with original jurisdiction to adjudicate plaintiff's allegations of wrongdoing in a civil proceeding for money damages. The decision of the Appellate Court in plaintiff's previous lawsuit, reported at 138 Conn. App 93, compels a negative answer to that question here.

The claims against defendants are dismissed.

Paper copy of order mailed out to all appearing parties.

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Judge: STEVEN D ECKER