

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DOE AND JANE DOE,
AS THE NATURAL PARENTS
AND NEXT FRIENDS OF THEIR
MINOR CHILD, JAMES DOE

Case No. 02:08 CV 575

Plaintiffs,

JUDGE GREGORY L. FROST

v.

Magistrate Judge NORAH MCCANN KING

MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION,
et al.,

Defendants.

MOTION SEEKING COURT'S RECONSIDERATION OF OPINION AND ORDER
ISSUED JUNE 1, 2010

Now comes former counsel for Defendant/Counterclaimant John Freshwater, on behalf of John Freshwater and the undersigned seeking reconsideration of this Court's Opinion and Order dated June 1, 2010, based upon new information the Court was previously unable to consider which is more fully set forth in the attached memorandum of support. The undersigned requests an in-person, oral hearing before this Honorable Court to fully provide documentation in response to the allegations made by the Plaintiffs and to accurately demonstrate assumptions made in the Court's Opinion and resultant Order are contrary to existent evidence.

MEMORANDUM IN SUPPORT

On June 1, 2010, this Court issued an Opinion and Order based upon a hearing conducted May 26, 2010.

May 26, 2010 - Hearing

May it please this Court to know, as is attested in the attached affidavit of Attorney R. Kelly Hamilton (Exhibit 7), Hamilton was unsuccessful in his attempt to attend the hearing on May 26, 2010, due to a real and documented event of two flat tires on the vehicle Hamilton was driving. Not believing in luck either good or bad, Attorney Hamilton presents evidence herein and can attest under oath his vehicle was inoperable due to two flat tires on the passenger side of his Chevy Tahoe. Subsequent to telephoning John Freshwater on May 26, 2010, at 8:42AM to advise Freshwater and Attorney Sandra McIntosh of his status, Hamilton telephoned the Ohio Chapter of AAA to request vehicle roadside assistance. AAA responded by dispatching R&R Towing located on South High Street, Columbus, Ohio, to tow Hamilton's vehicle to the Walmart located on Stringtown Road, Grove City, Ohio. As the tires were still under warranty by Walmart, both tires were repaired free of charge as one tire had a nail in the tread and both tires had suffered a "beed leak" which occurs after striking a pothole. Affiant attaches the receipts from the Walmart tire repair as Exhibits 4 and 5 with an additional exhibit containing a picture of the nail given to affiant from his tire. (Exhibit 6) This Court appears to have made a decision based upon a perception of luck encountered by Attorney Hamilton leading to a compounding conclusion that Hamilton failed to appear at the hearing.

Attorney Hamilton respectfully brings to this Court's attention the reality that Hamilton's vehicle arrived at Walmart for service on May 26, 2010, at 9:46AM and was finished with repairs and released back to Hamilton two hours later at 11:44AM. Accordingly, to overcome any appearance of compounding conclusions, Hamilton

respectfully requests a reconsideration of this Court's Opinion and Order to include an oral, in court, hearing.

Discovery Evidence

The evolving complexity of the matters concerning John Freshwater were not established until after the investigative report conducted and authored by HR on Call, Inc. was completed and released on June 20, 2008. The benefit of 20/20 hindsight has proved more copies and photographs would have been desired and should have been made during the May 2008 preparations for the second interview.

During May 2008, John Freshwater and the undersigned worked to prepare and expected to deliver Freshwater's comprehensive written statements to investigators from HR on Call, Inc. Many details have been learned by Freshwater since May 2008. Accusations have been made by Plaintiffs in this matter against John Freshwater and the undersigned concerning discovery. Again, not believing in luck either in the form of good or bad, Attorney Hamilton has documented proof as to the reality of a water pipe break having occurred at his office located at 3800 Broadway. The water pipe break occurred between January 13, 2009 and January 16, 2009. The burst water pipe is evidenced by the repair made as attested to by Larry Cormack, a plumber with fifteen (15) years of experience and who is licensed by the State of Ohio as a State Plumbing Inspector. Furthermore, receipts from Home Depot dated January 17, 2009, (Exhibit 2) plumber Larry Cormack's affidavit (Exhibit 1) and the purchase of a new computer from Best Buy on February 3, 2009 (Exhibit 3) demonstrate that any discovery castigation against Hamilton, or worse yet his client John Freshwater, are without merit and contrary to available evidence.

This Court appears to have made a decision based upon a perception of luck encountered by Attorney Hamilton and an assertion that the evidence wholly contradicts Hamilton. Attorney Hamilton respectfully brings to this Court's attention the reality that Hamilton's water damaged computer prevents Hamilton from being able to prove the existence of the computer files, thus Hamilton did abide by this Court's decision to provide information related to billing for May 2008 to counsel for Plaintiffs when Hamilton signed an affidavit on April 27, 2010, attesting:

Affiant states he does not have any computer file containing any metadata related to any billing records for a client named John Freshwater depicting any information concerning affidavits signed by John Freshwater in May 2008.

This Court's Opinion dated June 1, 2010, states Attorney Hamilton's previous affidavit statement (April 27, 2010) did not satisfy the Court's discovery order. Attorney Hamilton used the most precise language he could articulate in Document 97-3 at 21 to accurately state his position regarding discovery. Attorney Hamilton respectfully requests this Court identify language that would satisfy the discovery order regarding Hamilton's inability to provide the requested computer information in light of the definite and accurate evidence of damage to the gray Toshiba computer, the evidence of which is attached this motion. Accordingly, to overcome any appearance of compounding conclusions, Hamilton respectfully requests a reconsideration of this Court's Opinion and Order to include an oral, in court, hearing.

The Court's Opinion and resultant Order are seemingly based upon an Order that was to be complied with by Attorney Hamilton and Freshwater on "March 4, 2010". Most respectfully, Attorney Hamilton directs the Court's attention that "March 4, 2010" does not appear to be a date of significance in this matter. Accordingly, to overcome any

appearance of compounding conclusions leading to an appealable issue related to a date of violation in this matter, Hamilton respectfully requests a reconsideration of this Court's Opinion and Order to include an oral, in court, hearing.

Lastly, the Court's Opinion and Order directs payment by Defendant to Plaintiff's counsel for reasonable attorney's fees. Plaintiff's counsel has submitted a statement of fees totaling \$28,737.50 based upon hourly rates to include \$525.00 per hour. Aside from Defendant being unable to pay any amount to Plaintiff's counsel due to Defendant being suspended from pay since June 20, 2008, Defendant contends any hourly rate above \$275.00 per hour is an unreasonable hourly rate. Accordingly, reconsideration of this Court's Opinion and Order are requested.

Respectfully submitted,

s/ R. Kelly Hamilton

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CERTIFICATE OF SERVICE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

I hereby certify that on June 15, 2010, I electronically filed the foregoing MOTION SEEKING COURT'S RECONSIDERATION OF OPINION AND ORDER ISSUED JUNE 1, 2010, with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

s/ R. Kelly Hamilton

The Law Office of R. Kelly Hamilton, LLC (0066403)