

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

EMILY BROWN,)	
	Plaintiff,)	Case No. ST-09-DV-201
vs.)	
)	Action for Domestic Violence
BOYD B. BROWN, JR. and)	
LAURIE VAN BEVERHOUDT,)	
)	
	Defendants.)	
)	
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**MEMORANDUM OPINION AND ORDER DENYING MOTION FOR
RECONSIDERATION**

This matter is before the Court on the pleading filed by Defendant Boyd B. Brown, Jr. entitled APPLICANT RULE 7.3 MOTION FOR RECONSIDERATION TO COURT AFTER THE ENTRY OF THE ORDER OR DECISION and MOTION FOR DISQUALIFICATION/RECUSAL OF magistrate (sic) KATHLEEN MACKAY pursuant to Title 4 V.I. Code (3). The Plaintiff has filed no response to the motion. The Court will address the motion for disqualification/recusal in a separate order.

Plaintiff Emily Brown filed a domestic violence complaint against her son, Defendant Boyd B. Brown, Jr., and his girlfriend, Defendant Laurie Van Beverhoudt, on July 28, 2009. That same day Magistrate Alan D. Smith entered an ex-parte temporary restraining order against the Defendants, pursuant to Title 16 Virgin Islands Code Section 98, and the matter came on for hearing on August 6, 2009. All parties appeared *Pro Se*, were sworn and testified.

The evidence revealed that Plaintiff and Defendants lived on the same property; Plaintiff occupied the upstairs unit and Defendants occupied a downstairs unit with partial facilities but no bathroom. Plaintiff testified that she had been the object of Defendant Brown's continuous verbal abuse and haranguing since he had been released from prison, that his harassment had caused her physical maladies, specifically high blood pressure, that she was at her wit's end and could absolutely no longer tolerate his abuse. While the Plaintiff was testifying about the type of abuse to which she had been subject, Defendant Brown nodded his head. The Court found the Plaintiff credible. Therefore, the Court entered an Order requiring the Defendants to vacate the property and further restraining them from harassing, verbally abusing, threatening or intimidating Plaintiff Emily Brown or from otherwise subjecting her to any form of domestic violence. The Court further ordered Defendants to vacate the Plaintiff's property within two weeks.

Defendant Brown's motion for reconsideration, filed on August 7, 2009, is directed at the afore-described Order of this Court dated August 6, 2009. Defendant Brown's motion for reconsideration argues that this Court committed clear error, manifest injustice, denied him a fair trial, denied him due process, subjected him to double jeopardy, violated various constitutional rights, and that the Court was prejudiced and biased.

Motions for reconsideration in this Court are governed by Rule 7.3 of the Local Rules of Civil Procedure of the District Court of the Virgin Islands, as made applicable to the Superior Court pursuant to Super. Ct. R. 7.

LRCi 7.3 provides that a motion for reconsideration shall be based on: 1) intervening change in controlling law; 2) availability of new evidence; or 3) the need to correct clear error or prevent manifest injustice.

There has been no change in the controlling law since the subject Order was entered on August 6, 2009, nor does Defendant Brown argue that there has been an intervening change in the law.

The Court has carefully reviewed Defendant Brown's motion for reconsideration and does not find that it presents any new evidence. Nevertheless, the Court will separately address each point raised in Brown's motion.

1. Defendant Brown states that he was paroled on June 2, 2007 after serving more than 14 years in prison. During the hearing on this matter on August 6, 2009, Defendant Brown testified that he had been imprisoned for some years and was released in June 2007. Therefore, that fact is not new evidence.
2. Plaintiff signed parole documents on February 9, 2005 agreeing to provide a residence to Defendant Brown upon his release from prison on parole. Attached to Defendant's Motion for Reconsideration is a copy of a "Notice of Intent to Provide Residence to Parolee" purportedly signed by Plaintiff on February 2, 2005, which states that Plaintiff will make her residence available to Defendant Brown if he is paroled and further confirmed to the Parole Board that she would notify the Board if Defendant ceased to reside with her during the period of parole. The Court reviewed and examined that document during the hearing. At that time Plaintiff denied having signed the document.

However, the Court found that even if Plaintiff had indeed executed the document, she did not pledge to offer the Defendant a residence indefinitely and was only required to advise the Parole Board of Defendant Brown's change in residence. Therefore, the Court found that directing the Defendants to vacate the Plaintiff's premises would not force a breach of the Plaintiff's notice of intention, even if she had indeed signed the document. Therefore, Defendant Brown's attachment of this document to the motion for reconsideration does not constitute new evidence as it had been considered during the hearing.

3. Plaintiff has subjected Defendant Brown to domestic abuse. During the hearing Defendant Brown testified that sometimes he was the subject of verbal abuse by Plaintiff. Therefore, this assertion in the motion for reconsideration does not constitute new evidence.
4. Defendant Brown settled a case against the prison system and endorsed the settlement check in the sum of \$20,000.00 over to the Plaintiff, thereby creating a fiduciary trust. The Court has no proof that the check was indeed endorsed over to Plaintiff, but during the hearing the Court did examine a photocopy of the subject check made payable to Defendant Brown. Therefore, this is not new evidence.
5. Defendant Brown alluded to having an equitable claim or legal title in the Plaintiff's property where he was residing. That assertion was also raised in the hearing and is not new evidence.

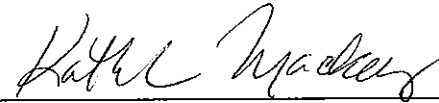
6. Defendant Laurie Van Beverhoudt paid monies to the Plaintiff to cover expenses at the household and Defendant Brown pays the light bill at the property. During the hearing Defendant Brown also made these assertions. Therefore, they are not new evidence.
7. Prior to filing the domestic violence complaint, Plaintiff filed an action for forcible entry and detainer against Defendant Brown. That matter was docketed as Emily Brown v. Boyd B. Brown, Jr., Action for Forcible Entry and Detainer, Case No. ST-09-CV-323, and it came on for hearing before this Court on July 28, 2009. The undersigned magistrate dismissed that matter for lack of subject matter jurisdiction and pointed out to Plaintiff that her case sounded in domestic violence and could be heard in family court. It is apparent that the Plaintiff then filed the subject matter in family court. Therefore, this Court had knowledge of the Plaintiff's prior filing of the action for forcible entry and detainer and it does not constitute new evidence.
8. Defendant Brown has been subjected to eviction, homelessness, and cruel and unusual punishment. This claim does not constitute new evidence that requires the Court to reconsider its order.

The remaining justifications for reconsideration of the Court's Order of August 6, 2009 are to correct clear error or to prevent manifest injustice. LRCi 7.3. The Court finds no clear error in its Order that requires correction because the Defendants' conduct constituted domestic violence as defined in 16 V.I.C. § 91(b) and the order

requiring Defendants to vacate the Plaintiff's property was appropriate relief under 16 § 97(b)(3). Consequently, entry of the Order of August 6, 2009 does not constitute manifest injustice that the Court is obliged to prevent.

Accordingly, Defendant's Motion for Reconsideration is **DENIED**.

DATED: September 23, 2009



KATHLEEN MACKAY

Magistrate of the Superior Court
of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.

Clerk of the Court

BY: 

MYACINTH M. LOCKHART

Court Clerk Supervisor 9 1231 09