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Motions, Pleadings and Filings

Only the Westlaw citation is currently available.

United States District Court,
E.D. Virginia.
Delores A. FRYE, Plaintiff,
v.
PULTE CORPORATION, et al., Defendant.
No. Civ.A. 00-905-A.

June 21, 2001.

Martin P. Hogan, Gromfine & Taylor PC,
Alexandria, VA, Delores A. Frye, pro se, Reston,
VA, for plaintiff.

Steven W. Ray, Michelle B. Radcliffe, Ray & Isler
PC, Vienna, VA, for defendants.

ORDER

HILTON, Chief J.

*1 This matter comes before the Court on four motions filed by Plaintiff *pro se*: (1) emergency motion to vacate judgment; (2) motion to withdraw counsel; (3) motion to withdraw acceptance of the offer of judgment; and (4) motion to reinstate this case to the trial docket.

In this Title VII matter, Plaintiff accepted an offer of judgment from Defendant in the amount of \$35,000. A written notice of this acceptance was filed by her attorney. A judgment was entered by the Clerk of Court by her deputy pursuant to Fed.R.Civ.P. 68. Plaintiff, by virtue of her *pro se* motions, essentially seeks to have the Clerk's judgment vacated and her current counsel removed from the case.

Relief from the judgment in this case is governed by Fed.R.Civ.P. 60, which provides in pertinent part:

On motion and upon such terms as are just, the court may relieve a party ... from a final judgment ... for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect; ...
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other

misconduct of an adverse party; ... or
(6) any other reason justifying relief from the operation of the judgment.

Plaintiff's contention is essentially that she has changed her mind regarding the offer of judgment. This alone cannot be the basis of a Rule 60(b) motion. She has come forward with no evidence of fraud, misrepresentation, or misconduct by the Defendant. She has come forward with no evidence that she was under duress when she accepted the offer of judgment. She concedes that she accepted the offer of judgment and that she communicated this fact to her counsel. The fact that she then changed her mind cannot justify relief from the judgment. Rule 60(b) is meant for "exceptional circumstances." Dowell v. State Farm Fire & Cas. Auto. Ins. Co., 993 F.2d 46, 48 (4th Cir.1993). This is not a case involving "exceptional circumstances." In addition, Plaintiff has not come forward with evidence or allegations that warrant a hearing on this matter.

Since this case is now over, Plaintiff's motion to withdraw (or terminate) counsel is moot.

For these reasons, it is hereby,

ORDERED that Plaintiff's emergency motion to vacate judgment is DENIED; Plaintiff's motion to withdraw counsel is DENIED as moot; Plaintiff's motion to withdraw acceptance of the offer of judgment is DENIED; and Plaintiff's motion to reinstate this case to the trial docket is DENIED.

Not Reported in F.Supp.2d, 2001 WL 34360377 (E.D.Va.)

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• 1:00CV00905 (Docket)
(Jun. 01, 2000)

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Briefs and Other Related Documents

This case was not selected for publication in the Federal Reporter.

UNPUBLISHED

Please use FIND to look at the applicable circuit court rule before citing this opinion. Fourth Circuit Rule 36(c). (FIND CTA4 Rule 36(c).)

United States Court of Appeals,
Fourth Circuit.
Delores A. FRYE, Plaintiff-Appellant,
v.
PULTE CORPORATION; Pulte Home Corporation,
d/b/a Stoneridge Builders and
Developers, Defendants-Appellees,
and
Stoneridge Builders and Developers, Defendant.
No. 01-1897.

Submitted Nov. 8, 2001.
Decided Nov. 15, 2001.

Appeal from the United States District Court for the Eastern District of Virginia, *232 at Alexandria. Claude M. Hilton, Chief District Judge. (CA-00-905-A).

Delores A. Frye, pro se.

Steven William Ray, Michelle B. Radcliffe, Ray & Isler, P.C., Vienna, VA, for appellees.

Before WILKINS, MICHAEL, and KING, Circuit Judges.

PER CURIAM.

Delores A. Frye appeals from the district court's order denying her Fed.R.Civ.P. 60(b) motion. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. *Frye v. Pulte Corp.*, No. CA-00-905-A (E.D. Va. filed June 21, 2001; entered June 22, 2001). We dispense with oral argument because the facts and legal

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED.

21 Fed.Appx. 231

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• 01-1897 (Docket)
(Jul. 17, 2001)

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