

**Matter of Toulson v New York State Unified Ct.
Sys. Off. Ct. Admin.**

2009 NY Slip Op 31214(U)

June 2, 2009

Supreme Court, New York County

Docket Number: 112153/08

Judge: James A. Yates

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: Hon. James A. Yates

PART 504

Index Number : 112153/2008

TOULSON, LASHAWN

vs

NYS UNIFIED COURT SYSTER

Sequence Number : 004

REARGUMENT/RECONSIDERATION

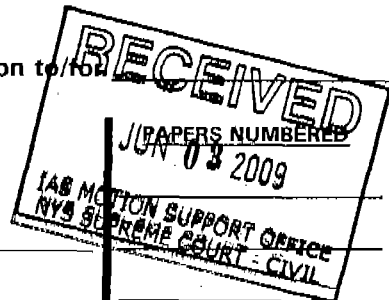
INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for



Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

On May 20, 2009, Petitioner sought leave to renew or reargue a dismissal of her Article 78 petition pursuant to CPLR 2221. Respondents opposed the application. Petitioner's motion for leave to renew or reargue is denied and dismissed because after balancing all factors, Petitioner failed to demonstrate new or additional facts warranting renewal or that the Court overlooked or misapprehended the facts or law so as to warrant reargument. Petitioner has made no proffer to present new facts even if she was granted more time. As well, the Court declines to permit late service under CPLR 306-b where the petition itself is clearly without merit. (See attached Decision, Judgment, and Order.)

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

PT. 504 JUN 03 2009

Dated: _____

6/2/2009

HON. JAMES A. YATES

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

CTD

of motion stated that, "pursuant to CPLR 2214 (b), answering papers, if any, are required to be served upon the undersigned at least seven days before the return date of this motion." (See Resp. Notice of Motion, Mar. 20, 2009, at 2.) Ms. Toulson failed to do so.

On April 20, 2009, the Court dismissed Ms. Toulson's petition pursuant to CPLR 306-b. On April 21, 2009, Ms. Toulson's counsel sent the Court a letter explaining that he had contacted "counsel for Respondents last week seeking an adjournment to file opposition papers and [Respondent's counsel] graciously cooperated by extending a week's time to serve opposition papers until April 24, 2009, and to reset the motion to May 15, 2009, with an opportunity to reply, if necessary until May 14, 2009." Ms. Toulson's counsel further relayed that "[g]iven the Passover holiday," he was "unable to have a written stipulation signed by all parties filed with the Court on the initial return date (April 17, 2009)," and asked the Court to "allow Petitioner to submit responsive papers." (Letter from Douglas Rosenthal, Apr. 21, 2009.)

On April 23, 2009, OCA confirmed Ms. Toulson's previous request for a time extension. On May 20, 2009, Ms. Toulson filed a motion for leave to renew or reargue pursuant to CPLR 2221. OCA opposed the application.

Discussion

CPLR 2005 states: "[u]pon an application satisfying the requirements of subdivision (d) of section 3012 or subdivision (a) of rule 5015, the court shall not, as a matter of law, be precluded from exercising its discretion in the interests of justice to excuse delay or default resulting from law office failure." Before a court exercises its discretion, it must also be satisfied that renewal or reargument is not a futile gesture, and that a meritorious cause of action or defense can be demonstrated (*see Barasch v Micucci*, 49 NY2d 594, 599 [1980]). That, Ms. Toulson has failed to do. Moreover, the "Affirmation in Support Motion," dated May 20, 2009, by Ms. Toulson fails to establish any potential merit to her claim (*see e.g. Kel Mgt. Corp. v Rogers & Wells*, 64 NY2d 904, 905 [1985]).

"It is the function of a civil service commission to fix fair and reasonable standards for testing the qualifications of applicants" (*Matter of Kulesa v Off. of Ct. Admin.*, 208 AD2d 927, 928 [2d Dept 1984]). "[C]ourts will not interfere with the commission's discretion in determining the qualifications of candidates unless the commission's determination is so irrational

and arbitrary that it warrants judicial intervention" (*Matter of Weitzenberg v Nassau County Civ. Serv. Commn.*, 172 AD2d 613, 613 [2d Dept 1991]).

Here, OCA's decision to disqualify Ms. Toulson was rational and not arbitrary. The title of New York State Court Officer - Trainee (JG-14) is the entry-level title in the Court Security title series of the classified civil service of the New York State Unified Court System (UCS). Court officers are responsible for maintaining order and decorum and providing security in the courts. (See State of New York Unified Court System, http://www.courts.state.ny.us/ea/xml/asp_transform/DisplayTitleStandard.asp?title=9467000 [accessed May 22, 2009].) The title for Court Officer has been placed in the competitive jurisdictional class where "it is practicable to determine the merit and fitness of applicants by competitive examination" (22 NYCRR 25.11).

The selection procedure for court officer candidates requires, in addition to the written examination, the successful completion of a medical examination, physical ability and psychological examinations, and a background investigation. Failure to pass any of these portions disqualifies a candidate and results in the removal of the candidate's name from the eligible list. (See affidavit of Pedro Morales, May 12, 2009, ¶ 6.)

Ms. Toulson had three opportunities to complete the medical examination successfully, and failed to do so. On January 2, 2007, Ms. Toulson underwent her medical examination and was disqualified because she was unable to complete it. At the time of the examination, Ms. Toulson was pregnant, and could not have an x-ray taken of her chest. The disqualification was not final. For remediation, Ms. Toulson's obstetrician would have to clear Ms. Toulson to report for duty, and Ms. Toulson would need to have an x-ray taken of her chest. (See *id.* ¶ 21.)

After Ms. Toulson had an x-ray taken of her chest, she continued with her medical examination on July 12, 2007, where she was disqualified again. First, Ms. Toulson had undergone surgery for a condition not related to her pregnancy and had not been medically cleared to report for duty. Second, the pulmonary function test could not be administered to her. And third, the results of a blood test indicated that she had anemia. Again, the disqualification was not final. For remediation, Ms. Toulson would have to secure a post-surgery medical clearance to report for duty, complete a pulmonary function test, and provide documentation that her anemia was under control. (See *id.* ¶ 23.) In October 2007, Ms. Toulson submitted documents from her

treating physician that stated she was medically cleared to report for duty after her surgery, and she no longer had severe anemia (see *id.* ¶ 24.)

On March 17, 2008, Ms. Toulson underwent a medical examination for a third time and was disqualified again because of significant anemia. Like the last two times, the disqualification was not final. Ms. Toulson was directed to have her treating physician re-test her and to submit those test results by March 28, 2008. Ms. Toulson failed to submit those test results. (See *id.* ¶ 27-28.) Because eligible list number 45-488, upon which Ms. Toulson's eligibility for appointment was predicated, was closed, her disqualification was final (see *id.* ¶ 29; see also *id.*, exhibit I.)

The Summary of Medical Standards for the New York Court Officer - Trainee position describes the hematological standard as follows:

"Eligible candidates must be free of blood system impairments that will interfere with performance of the required job duties. Hematological impairments will be evaluated on an individual basis."

(*Id.*, exhibit C, at 19).

Court officers who do not meet the hematological standard due to anemia are disqualified from consideration for healthy and safety reasons. Anemia is "[a] reduction in the mass of circulating red blood cells . . . Anemic patients may experience weakness, fatigue, lightheadedness, breathlessness, palpitations, angina pectoris, and headache." (Taber's Medical Cyclopedic Dictionary.) Candidates must demonstrate the ability to use "physical force to restrain an individual from escape, to run after an escapee, to restrain an individual taken into custody, or to forcibly disarm a person with a deadly weapon" (affidavit of Pedro Morales, May 12, 2009, ¶ 11). Since Ms. Toulson failed to complete the medical examination and was found anemic, OCA properly disqualified her.

Conclusion

A party seeking reargument must show that the court overlooked or misapprehended fact or law in determining a prior motion (see CPLR 2221 [d] [2]; *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]). Reargument is not designed to afford the unsuccessful party successive

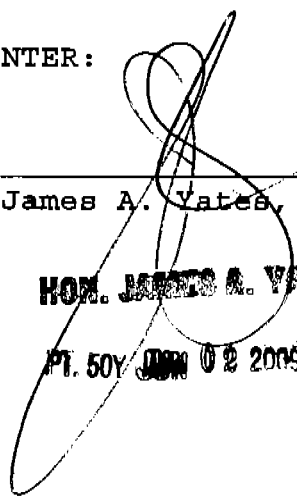
opportunities to reargue issues previously decided (see *Pro Brokerage v Home Ins. Co.*, 99 AD2d 971, 971 [1st Dept 1984]), or to present arguments different from those originally asserted (see *McGill v Goldman*, 261 AD2d 593, 594 [2d Dept 1999]).

A motion to renew under CPLR 2221, on the other hand, is intended to draw the court's attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court's attention (see *Matter of Beiny v Wynyard*, 132 AD2d 190, 210 [1st Dept 1987], *lv dismissed* 71 NY2d 994 [1988]).

Balancing all these factors, Ms. Toulson failed to meet her burden of proof in demonstrating new or additional facts warranting renewal or that the Court overlooked or misapprehended the facts or law so as to warrant reargument. Additionally, Ms. Toulson has made no proffer to present new facts even if she was granted more time. In sum, Ms. Toulson's claim is meritless, and she is unable to allege new facts to support her claim. Accordingly, Ms. Toulson's motion for leave to renew or reargue is denied and dismissed.

This constitutes the Decision, Judgment, and Order of the Court.

Dated: 6/2/2009

ENTER:

James A. Yates, J.S.C.
HON. JAMES A. YATES
PT. 50Y JUN 02 2009

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).