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DISTRICT COURT, LARIMER COUNTY,
COLORADO

Court Address: 201 La Porte Avenue
Fort Collins, CO 80521
Phone Number: (970) 494-3500

Plaintiff: ERIC SUTHERLAND, *pro se*

v.

Defendants: THE CITY OF FORT COLLINS, a home rule municipality in the State of Colorado; STEVE MILLER, in his capacity as the Larimer County Assessor and all successors in this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; and

Indispensable Parties: THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.

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Case No.: 2018CV149

Courtroom/Division: 5B

**CITY OF FORT COLLINS' RESPONSE TO PLAINTIFF'S MOTION TO STRIKE
NOTICE OF HEARING OF NOVEMBER 27TH, 2019 AND VACATE ORDER
GRANTING PLAINTIFF'S MOTION FOR A HEARING**

Defendant City of Fort Collins (the “City”), by and through its counsel, respectfully submits the following Response to Plaintiff’s Motion to Strike Notice of Hearing of November 27th, 2019 and Vacate Order Granting Plaintiff’s Motion for a Hearing (the “Motion”).

I. Summary

On August 16, 2019, Mr. Sutherland motioned for a hearing on the City’s Second Motion for Attorneys’ Fees. This Court granted Mr. Sutherland’s motion and ordered the parties to set a hearing date. *See* 09/06/19 Order Granting Plaintiff’s Motion for a Hearing (the “Order”). In accordance with the Rules of Civil Procedure, the parties set Mr. Sutherland’s requested hearing for November 27, 2019.

Mr. Sutherland now motions this Court to strike the Notice of Hearing that noticed the date, time, and location of his requested hearing. Mr. Sutherland further motions this Court to vacate its Order that granted him his requested hearing on the City’s fee motion. Mr. Sutherland’s combined motion to strike and vacate is procedurally improper and substantively without merit. This Court should deny the requested relief.

II. The Court Properly Set the Hearing for November 27, 2019

The Court properly set the hearing on the City’s Second Motion for Attorneys’ Fees and Costs. Mr. Sutherland’s Rule 97 Motion, which he filed only an hour before the scheduled setting, suspends proceedings. Nothing in Rule 97 suggests that a Court cannot continue its clerical functions by setting a previously ordered hearing and maintaining an orderly docket. *See Firm Founds. v. Leonard*, 2018 Colo. Dist. LEXIS 1216, *5 (“The Court’s inherent power over its docket should be used to assure that Court’s docket is not abused and that justice will be fairly applied.”); *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (noting “the power inherent in every

court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants”); *United States v. Colo. State Eng’r (In re Water Rights of United States)*, 101 P.3d 1072, 1080-81 (Colo. 2004) (same). Further, during the October 1, 2019 telephone setting to set the hearing, the Clerk of this Court notified the parties that the November 27, 2019 fees hearing would be vacated and reset if the Rule 97 motion was not adjudicated before the hearing. This Court properly denied Mr. Sutherland’s Rule 97 motion on October 30, 2019.

Moreover, at no point during the telephone setting did Mr. Sutherland state that he was unavailable for a hearing on November 27, 2019. When Mr. Sutherland contacted the Clerk on October 7, 2019 and complained of his unavailability, he refused to file a motion to continue the hearing. *See Ex. A*, Clerk Correspondence. For these reasons, the hearing on the City’s Second Motion for Attorneys’ Fees was properly set for November 27, 2019.

III. Mr. Sutherland’s Request to Vacate the Order Granting his Motion for a Hearing is Improper

Mr. Sutherland objects to this Court’s Order granting his request for a hearing for two reasons: (1) the Order was issued before Mr. Sutherland filed his reply and (2) the Court’s Order improperly limits the scope of the hearing. Both of these positions are meritless.

The Court’s ruling on Mr. Sutherland’s Motion for a Hearing for was not “premature.” *See* Motion at 4. A judge can rule on a motion at any time. *E.g.*, *Jones v. Keene Concrete, Inc.*, 2011 Colo. Dist. LEXIS 559, *2 (ruling on a motion to for reconsideration before a reply brief was filed). Rule 121 § 1-15, cited by Mr. Sutherland in his Motion, simply outlines the timing of responses and replies. That rule does not preclude a judge from ruling on a motion at any time after the motion is filed.

Further, for the reasons set forth in the City’s Response to Plaintiff’s Motion for a Hearing (see pages 3-5), the Court properly limited the scope of the hearing to “the reasonableness and necessity of the fees requested in the City’s July 25 motion.” 9/5/19 Order Granting Plaintiff’s Motion for a Hearing at 1; see *Rose L. Watson Revocable Tr. v. BP Am. Prod. Co.*, 2014 COA at ¶ 23 n.6 (finding that the trial court properly restricted the cross-examination of an attorney witness at the attorney fees hearing because “the attempted cross-examination was merely an attempt to relitigate the motion for summary judgment”). Regardless, Mr. Sutherland’s objections to the contents of the Order granting his request for a hearing is untimely and inappropriate.

Although Mr. Sutherland terms his motion as a request to vacate, Rules 59 and 60, the rules that empower a court to vacate its own orders, only apply to final orders and judgments. Because the Order granting a fees hearing is not a final order, Rules 59 and 60 do not apply. See *Moore & Co. v. Williams*, 672 P.2d 999, 1002 (Colo. 1983) (“A final judgment is one which ends the particular action in which it is entered, leaving nothing further for the court pronouncing it to do in order to completely determine the rights of the parties involved in the proceeding.”) (internal quotations omitted). Additionally, the substance of Mr. Sutherland’s Motion suggests that he still wants a hearing on the fee motion—the issue is that Mr. Sutherland objects to the scope of that hearing. See Motion at 5 (“However, Plaintiff does have the right to defend against the City’s second request for attorneys’ fees by introducing any and all evidence and argument necessary to establish that the first hearing was not superfluous, improper or otherwise frivolous or groundless.”). What Mr. Sutherland actually seeks is reconsideration.

Mr. Sutherland’s request for reconsideration is untimely. Rule 121 § 1-15(11), which governs motions for reconsideration, requires a party to file its motion to reconsider within

fourteen days of the contested order. The movant can only file a belated motion if good cause is shown. C.R.C.P. 121 § 1-15(11). The Order granting Mr. Sutherland’s motion for a hearing was entered on September 6, 2019. Mr. Sutherland waited two months (until November 6, 2019) to object and he has not demonstrated any cause—good or otherwise—for his belated objections. This Court should disregard Mr. Sutherland’s objections to the scope of the hearing.

Even if Mr. Sutherland’s request was not untimely (or if he had demonstrated the requisite good cause), reconsideration is not proper. Reconsideration requires “a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice.” C.R.C.P. 121, §1-15(11). Mr. Sutherland has alleged no such “manifest error” that “clearly mandates a different result.” Instead, he merely disagrees with the Court’s analysis and conclusions. This is insufficient. *See id.* (“A party moving for reconsideration must show more than a disagreement with the court’s decisions.”). Accordingly, Mr. Sutherland has failed to meet his burden to support this request for reconsideration of the scope of the hearing.

IV. Although the Hearing was Properly Set, the City Consents to Reset the Hearing

Given that Mr. Sutherland asserts that he is unavailable and unable to attend the currently scheduled hearing, the City will consent to reset the hearing. The City obtained available hearing dates from the Clerk of this Court and communicated to Mr. Sutherland that the City is able to reset the current hearing for December 13, 2019 at 1:30 p.m. However, Mr. Sutherland was unwilling to state whether he would be available. *See Ex. B*, Party Correspondence. Mr. Sutherland remains unwilling to work with the City reschedule his requested hearing. Because the City has conferred in good faith with Mr. Sutherland to reschedule his requested hearing, contemporaneously with this Response, the City is filing a Motion for a Continuance to reset the

fees hearing for December 13, 2019 at 1:30 p.m.

Dated this 21st November, 2019.

SHERMAN & HOWARD L.L.C.

s/ Rosemary A. Loehr

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CERTIFICATE OF SERVICE

I certify that on the 21st day of November, 2019, a true and correct copy of the foregoing was filed via Colorado Court's E-Filing system, and was served on the following:

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