

IN THE CIRCUIT COURT FOR THE
SEVENTEENTH JUDICIAL CIRCUIT, IN
AND FOR BROWARD COUNTY,
FLORIDA

BRADLEY J. EDWARDS and PAUL
G. CASSELL,

CASE NO.: 15-000072

Plaintiff(s),

JUDGE: LYNCH

v.

ALAN M. DERSHOWITZ,

Defendant.

**MOTION FOR RECONSIDERATION OF THIS COURT'S ORDER DENYING NON-
PARTY JEFFREY EPSTEIN'S MOTION TO QUASH SUBPOENA**

Jeffrey Epstein (hereinafter "Epstein"), a non-party to this action, by and through his undersigned counsel and pursuant to Rule 1.530 of the *Florida Rules of Civil Procedure*, hereby moves this Court for Reconsideration regarding its not yet final ruling¹ denying Epstein's Motion to Quash the Subpoena *Duces Tecum* issued by Plaintiff that was improperly served upon Epstein. As grounds therefor, Epstein states:

INTRODUCTION

The Plaintiff, Bradley J. Edwards ("Edwards"), and Epstein are involved in a separate and distinct lawsuit from the case at hand in the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida ("*Epstein v. Edwards*"); a case that began between the parties in 2009. Epstein was the prevailing party, and the court made a determination that Epstein was entitled to his attorneys' fees and costs. The court then ordered the parties to attend mediation on the issues of

¹ This Court sent an electronic communication to the parties of its intent to deny Epstein's Motion on the ground of Insufficient Evidence of Non-Residency, but to date this Order is not formally entered.

attorneys' fees and costs, and Epstein, a legal resident of the United States Virgin Islands, designated a representative to attend for him. For reasons that subsequently became clear, Edwards demanded Epstein's physical presence at the mediation, and obtained a court order compelling Epstein's personal attendance. Immediately upon entering the mediation of that separate and distinct litigation, Edwards had his process server *enter the mediation room* and serve Epstein, a non-party in the instant case, with the subpoena at issue in this matter. Epstein thereafter filed a Motion to quash the Subpoena *Duces Tecum*.

In his Motion, Epstein relied upon the binding case of *Stokes v. Bell*, 441 So. 2d 146 (Fla. 1983), which unequivocally states that a non-resident of the State; or even the County, cannot be served with a subpoena while attending court proceedings. *See also Lee v. Stevens of Florida, Inc.*, 578 So. 2d 867, 868 (Fla. 2d DCA 1991) (extending that protection to those attending alternative dispute resolution). This Court, however, denied Epstein's Motion on the ground of insufficient evidence of Epstein's non-residency. The Court did not discuss, consider, or otherwise rule upon the fact that Epstein, who is not a party to the instant action, was served during a court-ordered proceeding in a separate and distinct litigation at which he was present solely because Edwards petitioned the court for an order requiring Epstein to appear personally; making it apparent that Edwards's sole purpose of securing Epstein's court ordered presence at the mediation was to serve him with the subpoena in this case. Moreover, Edwards did not respond to Epstein's Motion to Quash or otherwise challenge Epstein's assertion of non-residency until he appeared before this Court at the hearing. Had he done so, Epstein would have easily been able to provide dispositive evidence, which is attached to this Motion, not only of Epstein's actual, legal, and permanent residence in the Virgin Islands, but also of Edwards's knowing lack of candor to the tribunal regarding same. That Edwards has been undeniably aware of Epstein's Virgin Islands residency

since at least 2009, in and of itself, mandates reconsideration, or a rehearing at which Epstein may present further evidence of his residency.

LEGAL ARGUMENT

In the case at hand, this Court should reconsider its Order for two reasons: First, because of the controlling applicable case law regarding the service of process on a non-party during a separate and distinct court-related proceeding and the burdens of proof associated therewith; and second, because of the incontrovertible fact that Epstein’s legal residence is exclusively in the United States Virgin Islands; a fact about which Edwards is indisputably aware. A motion for reconsideration is the equivalent of a motion for rehearing. *Dambro v. Dambro*, 900 So. 2d 724, 725-26 (Fla. 4th DCA 2005). “The purpose of a Motion for a Rehearing is to give the trial court an opportunity to consider matters which it failed to consider or overlooked.” *Pingree v. Quaintance*, 394 So. 2d 161, 162 (Fla. 1st DCA 1981). The Florida Supreme Court has stated unequivocally that a “trial court may not overrule or recede from the controlling decision of” an appellate court. *See System Components v. FDOT*, 14 So. 3d 967, 973 n.1 (Fla. 2009); *see also State ex rel. Reynolds v. White*, 24 So. 160, 315 (1898) (“[t]here is and can be no authority in an inferior court to correct mistakes made by this court in its conclusions of fact or its interpretation of the law If so, litigation would be interminable, the superior would be subordinated to the inferior, and the judgments of the superior could only be enforced when they coincided with the judgments of the inferior.”).

In *Stokes v. Bell*, the Florida Supreme Court 441 So. 2d 146 (Fla. 1983) declared that parties attending court outside of their territorial jurisdiction of their residence “**are immune from service of process while attending court and for a reasonable time before and after going to court and in returning to their homes.**” *Id.* at 146-47 (quoting *Rorick v. Chancey*, 178 So. 112,

116 (1937)) (emphasis added). In consistently upholding this rule, the courts have expressed the great importance of affording this immunity to witnesses or parties to litigation:

As commonly stated and applied, it [the rule] proceeds upon the ground that the due administration of justice requires that a court shall not permit interference with the progress of a cause pending before it, by the service of process in other suits. .

Id. at 147 (quoting *Lamb v. Schmitt*, 285 U.S. 222, 225 (1932)). Additionally, this rule works to prevent the delay of judicial administration and the chilling effect that a fear of lack of immunity would have on a person's right of access to the courts and/or the right to defend himself. *Id.* at 147. Consequently, denying non-party Epstein's Motion to Quash would be "receding from the controlling decision of" an appellate court. *See System Components v. FDOT*, 14 So. 3d 967, 973 n.1 (Fla. 2009).

Likewise, a trial court has the authority, upon a motion for rehearing, to "reopen the judgment if one has been entered, take additional testimony and enter a new judgment" pursuant to Rule 1.530(a) of the *Florida Rules of Civil Procedure*. Accordingly, this Motion for Reconsideration is proper so that this Court may consider the burden of proof and law applicable to this matter, as well as the additional exhibits and evidence provided herewith regarding Epstein's residency; evidence that is, and has been, in Edwards's possession for years and which Edwards knowingly withheld from this Court. *Panama City Gen. Partnership v. Godfrey Panama City Inv., LLC*, 109 So. 3d 291 (Fla. 1st DCA 2013); *see also Thompson v. State, Dep't of Revenue*, 867 So. 2d 603, 605 (Fla. 1st DCA 2004).

In the case at hand, the Subpoena *Duces Tecum* with which Epstein was served, which was attached as Exhibit B to Epstein's initial Motion to Quash, states thereon that it is "to be served at an alternate location." Ostensibly, Edwards was well aware at the time he had Epstein court-ordered to personally appear in Florida and serve him with this non-party Subpoena that Epstein

did not, and *does not, reside* in Palm Beach County. A true and correct copy of the Subpoena *Duces Tecum* is again attached hereto as “Exhibit A.” Additionally, knowing of Epstein’s actual, legal residency in the United States Virgin Islands, Edwards’s counsel selectively withheld this information from this Court when it cited the deposition of Jeffrey Epstein taken on January 25, 2012 as his sole basis to improperly argue that Epstein resided in Palm Beach County, Florida. In fact, in the very deposition upon which Edwards’s counsel relied in argument at hearing, which was taken by the same counsel for Edwards in the case of *Epstein v. Edwards*, Epstein testified as follows: “my **residence address** is 6100 Hook Boulevard in the Virgin Islands.” Counsel then asked: “do you maintain any other residences presently?” and Epstein replied “I have **vacation homes** in New Mexico, Palm Beach, New York, and Paris.” *See partial deposition transcript of Jeffrey Epstein dated January 25, 2012*, p. 5; lines 6-14, attached hereto as “Exhibit B” (emphasis added). Epstein’s vacation home in Palm Beach no more confers residency on him than do any of the other vacation homes he owns.

Further, Epstein’s Virgin Islands residency is established by Epstein’s tax form 1040, which was provided to Edwards in response to discovery requests in the *Edwards v. Epstein* matter. The form 1040 provided to Edwards and his counsel in that matter, the same counsel representing Edwards in the instant case, unmistakably shows Epstein’s legal address as the Virgin Islands. A copy of same is attached hereto as “Exhibit C.” Moreover, the Final Judgment entered by Judge Hafele in the *Epstein v. Edwards* matter on May 27, 2014 provides Epstein’s address as “6100 Red Hook Boulevard, Virgin Islands.” A copy of the Final Judgment is attached hereto as “Exhibit D.” Consequently, for Edwards to argue to this tribunal that Epstein is a resident of Palm Beach County is disingenuous and establishes his lack of candor to this tribunal.

Finally, as further corroboration of Epstein’s Virgin Islands residency, attached hereto as

composite “Exhibit E” is an affidavit from Jeffrey Epstein confirming that his legal and permanent residence is in the United States Virgin Islands, accompanied by Epstein’s current valid driver’s license and voter registration card, both of which were issued by the government of the United States Virgin Islands years before Edwards’s improper service of the subpoena on Epstein in this matter. These exhibits in support of this Motion for Rehearing permit this Court to “reopen the judgment if one has been entered, take additional testimony and enter a new judgment” pursuant to Rule 1.530(a) of the *Florida Rules of Civil Procedure*.

In addition to the reasons delineated in the case law cited above and in Epstein’s initial Motion to Quash, courts will also quash the service of a nonresident party when that party’s physical presence in Florida for the purposes of participating in unrelated pending litigation was effectuated by some sort of **trickery or deceit by the party seeking to obtain service**. *Mallin v. Sunshine Kitchens, Inc.*, 314 So. 2d 203, 204 (Fla. 3d DCA 1975); *Citrexsa, S.A. v. Landsman*, 528 So. 2d 517, 518 (Fla. 2d DCA 1988); *Lisa, S.A. v. Gutierrez*, 806 So. 2d 557, 558 (Fla. 3d DCA 2002) (emphasis added). In *Mallin*, the parties had been involved in a separate controversy and the appellant, Mallin, agreed- **not under subpoena**- to meet representatives of the appellee, Sunshine Kitchens, Inc., in New York to discuss potential settlement of that controversy. *Mallin*, 314 So. 2d at 204. However, the appellee told appellant that it would show a sign of good faith on the part of appellant if he travelled to Florida to participate in these negotiation discussions. *Id.* Just prior to appellant’s arrival in Florida, appellee commenced another lawsuit against appellant and had the summons served upon appellant on the day he arrived at appellee’s offices to participate in settlement negotiations. *Id.* Appellant moved to quash the service and the trial court denied the motion. The Third District, however, agreed that said service “was occasioned by fraud and deceit or by trickery or artifice.” *Id.* In reversing the lower court’s decision to deny the motion

to quash, the appellate court averred:

The predicate for the appellant journeyed [sic] to Florida was to demonstrate good faith in the negotiations for settlement. If the appellee desired the appellant to show good faith in order to resolve their differences by journeying to Florida, then it should have shown good faith by not arranging to have process served on him before the settlement conference had even concluded. This is particularly true when, as is obvious from the record, after the representatives of the appellee had secured an undertaking by the appellant to come to this jurisdiction they then proceeded to file a complaint, caused process to issue, and arranged to have it served during the good faith settlement conference.

Id.

Likewise, in *Citrexsa, S.A.*, residents of Mexico **voluntarily** agreed to meet in Florida to participate in settlement negotiations. *Citrexsa, S.A.*, 528 So. 2d at 518. Prior to their arrival in Florida, the appellees filed a complaint and procured a summons to be served on appellants. *Id.* Upon request by appellees, the meeting location for the settlement negotiations changed from the appellee's office to the appellee's attorney's office, where appellants were served upon their arrival. *Id.* The court held that “[p]ersonal service is void if obtained by inveigling or enticing the person to be served into the territorial jurisdiction of the court by means of fraud and deceit, actual or legal, or by trick or device, and in such case defendant is not required to appear or defend.” *Id.* (quoting 72 C.J.S. Process § 47 (1987)). Most importantly, the court found that “[appellee’s] agreement to participate in the settlement conference was merely an artifice to serve appellants.” *Citrexsa, S.A.*, 528 So. 2d at 518. *See also Lisa, S.A. v. Gutierrez*, 806 So. 2d 557, 558 (Fla. 3d DCA 2002) (finding that a shareholder acted in bad faith against nonresident individual officers of corporation when she called a regular meeting, ostensibly to gather financial information for the purposes of avoiding litigation, but with the actual intent of serving process on the nonresident individuals, thus holding that the service was invalid).

In the case at bench, the conduct by Edwards is even more egregious than that in the afore-

referenced cases. Here, Edwards secured a court order compelling Epstein to personally appear in this jurisdiction, on an issue he had no intention whatsoever of resolving, for the sole purpose of having Epstein, a non-party, served with the Subpoena *Duces Tecum* in this matter. Accordingly, Edwards should not be rewarded for his trickery and deceit and this Court should quash the subpoena. *Mallin v. Sunshine Kitchens, Inc.*, 314 So. 2d 203, 204 (Fla. 3d DCA 1975); *Citrexsa, S.A. v. Landsman*, 528 So. 2d 517, 518 (Fla. 2d DCA 1988); *Lisa, S.A. v. Gutierrez*, 806 So. 2d 557, 558 (Fla. 3d DCA 2002).

Finally, and again contrary to Edwards's assertion at the hearing on Epstein's Motion to Quash, when a person is immune under this rule, the only way a court may have personal jurisdiction over that party is **if the serving party can establish that the other party is a Florida resident**. *Keveloh v. Carter*, 699 So. 2d 285, 288 (Fla. 5th DCA 1997) (emphasis added). In response to Edwards's partial presentation of Epstein's 2012 deposition in which Epstein stated he owned a vacation home in Palm Beach County, Florida, Epstein argued to this Court that a vacation home, or merely owning a home in a locale, cannot establish a person's residency therein. Controlling law in this jurisdiction undeniably states that "[a] person may have several temporary local residences but **can have only one legal residence**." *Id.*; *See also Walker v. Harris*, 398 So. 2d 955 (Fla. 4th DCA 1981). The *Keveloh* court went on to explain:

A legal residence or "domicile" is the place where a person has fixed an abode with the present intention of making it his or her permanent home. ... Once established, a domicile continues until it is superseded by a new one. A domicile is presumed to continue, and the burden of proof ordinarily rests on the party asserting the abandonment of one domicile to demonstrate the acquisition of another....

A change of residence is accomplished and becomes effective when there is a good-faith intention to establish it, coupled with an actual physical move to the new residence, as evidenced by positive overt acts. This is so because legal residence consists of the concurrence of both fact *and* intention. ... Stated otherwise, the mere intention to acquire a new domicile without the fact of an actual removal avails nothing; neither does the fact of removal without the intention. ... The bona fides

of the intent is a highly significant factor. An individual's intent is subjective and therefore the best proof is where he or she says it is. ... Finally, the intention to acquire a new domicile must be to make a home at the moment, not to make a home in the future.

Id. (internal citations omitted).

In the instant case, there has been no evidence presented by either party that Epstein has any intent to change his domicile; his legal residence, because he does not have any intention of doing so and undeniably did not do so at the time of this indecorous service. Consequently, Epstein's Motion to Quash should have been granted.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service to the attached Certificate of Service List, this _____, 2015.

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