

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2023-CV-00168

Denise Muccioli

v.

City of Nashua

**ORDER ON PETITIONER'S MOTION TO RECONSIDER AND MOTION FOR
SANCTIONS AGAINST ATTORNEY BOLTON**

The petitioner, Denise Muccioli, attempted to bring this Right-to-Know action against the City of Nashua (the "City"). However, the petitioner did not name the City as a party in her pro se complaint. Rather, she identified the defendant as "Steven A Bolton, ESQ." (Compl. ¶ 2.) As a result, the Court did not issue a summons naming the City, nor did the petitioner ever request one. Instead, the Court only issued a summons for Attorney Bolton. That summons indicated that a final hearing would be held on May 8, 2023. The Court then held a hearing on that date, and Attorney Bolton appeared.

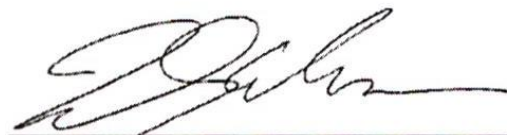
At the beginning of the hearing, the petitioner clarified that she had intended to name the City as the only respondent, and the Court issued an oral ruling changing the caption of the case to reflect that. Nonetheless, the fact remained that the Court had never issued a summons requiring the City's appearance, and therefore the Court lacked personal jurisdiction over the City in this matter at the time of the hearing. See generally Johnson v. Cintas Corp. No. 2, 811 N.W.2d 756, 768 (Wis. 2012) (explaining that "a summons that does not name the party intended to be sued fails, as a matter of law, to give notice to that party that an action has been commenced against it"); Casey v. Newport Rolling Mill Co., 161 S.W. 528, 529 (Ky. Ct. App. 1913) ("We have uniformly

held that the issuing of the summons is the commencement of the action, and that a summons, to be valid, must name the defendants to be summoned.”). Because the petitioner had not properly served a summons upon the City naming the City as a party, and she did not move for a continuance to do so, the Court dismissed the case by way of an oral ruling made at the hearing.

The petitioner now moves for reconsideration of that decision, arguing that “[t]he lawsuit was properly served under RSA 510:10 directly to the Mayor and the City Clerk[.]” (Pet’r’s Mot. ¶ 3.) The petitioner misunderstands the basis for the dismissal of this case. Even if the City was served with a summons in this case, the summons issued by the Court did not name the City as a defendant, nor did the summons require the City to attend the hearing. In other words, the defect was in the summons itself, not the sheriff’s service of that summons. The Court therefore does not find that it “has overlooked or misapprehended” any “points of law or fact” when it dismissed this case on the basis that it lacked personal jurisdiction over the City. Super. Ct. R. 12(e). The petitioner’s motion to reconsider is accordingly DENIED. To the extent the petitioner asks the Court to sanction Attorney Bolton, that request is likewise DENIED. As the petitioner herself conceded at the hearing, Attorney Bolton is not the proper party to this action and there is no basis for the Court to issue sanctions against a non-party.¹

So ordered.

Date: July 6, 2023



Hon. Jacalyn A. Colburn,
Presiding Justice

¹ The Court strongly suspects that Laurie Ortolano, a non-party to this action, is drafting the petitioner’s filings in this case, including the instant motion as well as the petition. (See Court Doc. 3.) In fact, the Court observed Ms. Ortolano communicating with the petitioner during the hearing in this matter. The Court reminds Ms. Ortolano that she is not an attorney and it is generally unlawful for non-attorneys to engage in the practice of law, which includes drafting legal filings on behalf of others. See RSA 311:7; State v. Settle, 124 N.H. 832, 837 (1984) (interpreting RSA 311:7 to prohibit non-attorneys from preparing and filing documents in the court system on behalf of others).