IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

BERNICE'S EDUCATIONAL)	
SCHOOL AGE CENTER, INC.)	
Defendant-Below/Appellant)	
v.)	C.A. No. CPU4-12-003634
LAYA COOPER,)	(JP13-12-004613)
Plaintiff-Below/Appellee)	
)	

Submitted: January 4, 2013 Decided: February 18, 2013

George E. Evans, Esquire 913 N. Market Street Suite 902 Wilmington, Delaware 19803 Attorney for Defendant-Below/Appellant

Laya Cooper 1320 Thatcher Street Wilmington, DE 19802

Self-represented Plaintiff-Below/Appellee

OPINION

This matter comes on appeal from the Justice of the Peace Court. The issue before the Court is whether the Justice of the Peace Court abused its discretion in denying Appellant's Motion to Vacate a default judgment entered against it. For the reasons set forth below, the decision of the Justice of the Peace Court is **REVERSED** and the case **REMANDED**.

FACTS AND PROCEDURAL HISTORY

Appellant Bernice's Educational School Age Center, Inc. ("the school") is a preschool operated by Bernice Thomas. Appellee Laya Cooper is the parent of a child who attended the school. On April 3, 2012, Ms. Cooper filed an action against Ms. Thomas in the Justice of the Peace Court to recover \$680.26, plus \$30.00 in court costs, claiming overpayment for services rendered by Ms. Thomas. On April 25, 2012, Ms. Thomas filed an Answer to the Complaint, requesting a trial. The Answer filed by Ms. Thomas contained a provision at the bottom of the page stating that if the answering party was a corporation or other artificial entity, either an attorney or a person designated by a Certificate of Representation ("Form 50") was required. Additionally, the form stated that only an attorney or a person designated by Form 50 could represent the answering party in the Justice of the Peace Court. At the time the answer was filed by Ms. Thomas, she was named individually as the defendant.

The Justice of the Peace Court entered default judgment against Ms. Thomas on June 7, 2012 on the basis that she failed to file an answer or appear for trial, after notice. The default was vacated on June 29, 2012, where the Court ordered plaintiff to investigate whether she sued the proper party and, if appropriate, file an alias summons naming Bernice's Educational School Age Center within the next 15 days. The Court also rescheduled trial for August 17, 2012. On June 29, 2012, defendant, Bernice Thomas, filed a counter-claim against Cooper demanding \$990.54. The filing does not make clear whether the claim is being brought by Thomas personally or by the school. However, the demand alleged in the counter-claim refers to the school. On July 11, 2012, Cooper filed an alias

summons naming Bernice's Educational School Age Center as the defendant and reasserts the claim for \$680.00. On July 12, 2012, the Justice of the Peace Court issued three (3) summons; they were directed to Cooper, Thomas, and the school respectively.

On August 17, 2012, Ms. Thomas appeared in the Justice of the Peace Court without counsel. Ms. Thomas had likewise failed to designate herself through a Certificate of Representation. The Justice of the Peace Court entered a default judgment in favor of Ms. Cooper. On August 26, Ms. Thomas filed a Motion to Vacate the default judgment. On September 11, 2012, the Justice of the Peace Court denied that motion. The Court issued an order which, after referring to the applicable standard to determine whether excusable neglect occurred, stated:

Here, there was a pretrial order which gave both parties the opportunity to prepare for trial. The principal issue was the correct party and the Form 50 issue, while it never became part of the order, was discussed. Even if it were not, the Court notes that there is no requirement that the Court advise. There is no excusable neglect in this matter and the default judgment stands.

STANDARD OF REVIEW

In an appeal of a Motion to Vacate default judgment, the standard of review is abuse of discretion. In *Ney v. Polite*, the Delaware Supreme Court held that appeals of the Justice of the Peace Court's denial of a motion to vacate "permits only review of the magistrate's order denying relief and not of the nonsuit and default judgments themselves." The applicable abuse of discretion standard is set forth in *Pitts v. White*:

The essence of judicial discretion is the exercise of judgment directed by conscience and reason, as opposed to capricious or arbitrary action; and where

¹ Ney v. Polite, 399 A.2d 527, 529 (Del. 1979); see Integrity Staffing Solutions v. Simmons, C.A. No. 08-04-202, 2008 WL 4456860, at *2 (Del. Com. Pl. Oct. 1, 2008) (Smalls, C.J.) (holding that the Justice of the Peace Court did not abuse its discretion in dismissing the motion to vacate judgment).

a court has not exceeded the bounds of reason in view of the circumstances, and has not so ignored recognized rules of law or practice, so as to produce injustice, its legal discretion has not been abused; for the question is not whether the reviewing court agrees with the court below, but rather whether it believes that the judicial mind in view of the relevant rules of law and upon due consideration of the facts of the case could reasonably have reached the conclusion of which complaint is made.²

Under this standard, "the reviewing court may not substitute its own view of what is right for those of the trial judge. The inquiry is whether the judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness."

DISCUSSION

The Justice of the Peace Civil Rule 60(b) states, in pertinent part, "On motion and upon such terms as are just the Court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect...." Excusable neglect has been interpreted as "that neglect which might have been the act of a reasonably prudent person under the circumstances." Delaware courts favor a liberal construction of Rule 60(b), preferring adjudication of the case on the merits rather than judgment based on default. To promote this policy, the Court will resolve all doubts raised by the motion in favor of the moving party.

² Pitts v. White, 109 A.2d 786, 788 (Del. Super. Ct. 1954).

³ Dover Historical Soc'y v. City of Dover Planning Comm'n, 902 A.2d 1084, 1089 (Del. 2006) (quoting Chavin v. Cope, 243 A.2d 694, 695 (Del. 1968)).

⁴ Cohen v. Brandywine Raceway Ass'n, 238 A.2d 320, 325 (Del. Super. Ct. 1968).

⁵ Battaglia v. Wilmington Sav. Fund Soc'y, 379 A.2d 1132, 1135 (Del. 1977).

⁶ Verizon Delaware, Inc. v. Baldwin Line Const. Co., No. Civ.A. 02C-040212-JRS., 2004 WL 838610, at *1 (Del. Super. Ct. Apr. 13, 2004); Williams v. Delcollo Elec., Inc., 576 A.2d 683, 685 (Del. Super. Ct. 1989).

A. Recent Precedent

At the outset, it is useful to note that recently, on January 2, 2013, the Supreme Court of Delaware issued four opinions that examined the resolution of cases on procedural grounds rather than on the merits of the case.⁷ In each of the four cases, a claim was dismissed because of a procedural error by one of the litigants. In three of the four cases, the Supreme Court decided in favor of the party at fault for the procedural error. The lone case that was decided against the party committing procedural error was a case in which the party (proceeding *pro se*) wantonly disobeyed the trial court's discovery deadlines, even in the face of the trial court explaining the basic tenets of discovery and why the disclosure of certain material was necessary.⁸

Just as in the instant case, in *Keener*, recently decided by the Supreme Court, a party was seeking relief from a final judgment under Rule 60(b).⁹ In that case, the plaintiff's attorney mistakenly believed that an additional filing by the defense permitted the plaintiff another twenty days to file a response to a Motion for Summary Judgment.¹⁰ The Court in that case found that the party's neglect in the matter was excusable.¹¹

The recent Delaware Supreme Court decisions reinforce the strong preference in Delaware courts of deciding cases on the merits rather than on procedural grounds. In *Keener*, for example, the Court explicitly reaffirmed the principle that the requirements to gain

⁷ Adams v. Aidoo, No. 177, 2012, 2013 WL 22093 (Del. Jan. 2, 2013); Christian v. Counseling Res. Assoc., Inc., No. 460, 2011, 2013 WL 22042 (Del. Jan. 2, 2013); Hill v. DuShuttle, No. 381, 2011, 2013 WL 21910 (Del. Jan. 2, 2013); Keener v. Isken, No. 609, 2011, 2013 WL 22087 (Del. Jan. 2, 2013).

⁸ Adams, 2013 WL 22093, at *1.

⁹ *Keener*, 2013 WL 22087, at *2.

¹⁰ *Id.* at *1.

¹¹ *Id.* at *2.

relief from a final judgment are to be liberally construed in favor of deciding cases on the merits.¹² It is true that this policy cannot trump the procedural requirements of litigation in every case. However, it is equally true that dismissal of a case or the entering of a default judgment against a party should be a sanction of last resort, even more so when the actual party to the litigation bears little to no personal responsibility for the error. As is explained below, this case falls into the category of cases in which the interest favoring the resolution cases on the merits outweighs the interest in the speedy resolution of cases that procedural rules provide.

B. The Present Case

The Justice of the Peace Court abused its discretion by failing to apply the standard of excusable neglect in its Order denying Ms. Thomas's Motion to Vacate. The Order correctly stated the standard to be applied when deciding whether a default judgment should be vacated, but it failed to apply that standard (or any other) to the facts of the case. The Supreme Court of Delaware has made clear:

In disposing of controverted cases, a judge should indicate the reasons for his [or her] action in an opinion showing that he [or she] has not disregarded or overlooked serious arguments of counsel. He [or she] thus shows his [or her] full understanding of the case, avoids the suspicion of arbitrary conclusion, promotes confidence in his [or her] intellectual integrity and may contribute useful precedent to the growth of the law.

While the current canons contained in The Delaware Judges' Code of Judicial Conduct purposely adopt the broader and more general approach now recommended by the American Bar Association, this Court made it specifically clear that it is part of a trial judge's adjudicative responsibilities to state the reasons for his [or her] action, no matter how briefly. Canon 3 requires that a judge be faithful to the law and maintain professional competence. The supplying of reasons for a judicial decision is part of

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¹² Id. See also Christian, 2013 WL 22042, at *1.

established law of this State and also a required incident of the (maintenance of) professional competence.¹³

The correct standard to be applied when a court determines whether a default judgment should be vacated is a three-factor test: (1) whether the neglect on the part of the defaulting party was excusable; (2) whether the defaulting party has displayed a meritorious defense; and (3) whether the non-defaulting party will be substantially prejudiced by setting aside the default judgment.¹⁴

The conduct in question before the Justice of the Peace Court in this case was the failure of Bernice Thomas to retain counsel to represent the school or to file a Certificate of Representation (Form 50) designating herself as the school's representative. Whether a party's conduct constitutes excusable neglect is a threshold matter which determines whether the second and third factors must be examined. As stated above, excusable neglect is the neglect which might have been the act of a reasonably prudent person under the circumstances. However, a defaulting party may not have a default judgment set aside where the party has simply ignored the judicial process. Because the order denying Ms. Thomas's Motion to Vacate did not apply the standard of to the facts of the case, and because the Ms. Thomas's neglect constituted nothing more than a failure to file a Form 50, this Court finds that the Justice of the Peace Court abused its discretion. This is especially true in this case because there were actually two matters pending, one where Thomas was served personally, and the second when the alias was filed naming the school as the defendant.

¹³ *Holden v. State*, 23 A.3d 843, 846 n.8 (Del. 2011) (quoting *Cannon v. Miller*, 412 A.2d 946, 947 (Del. 1980)) (internal quotation marks and citations omitted).

¹⁴ Williams, 576 A.2d 683, 684-85 (quoting Battaglia, 379 A.2d at 1135).

¹⁵ Stevenson v. Swiggett, 8 A.3d 1200, 1205 (Del. 2010).

¹⁶ *Id*.

The reasoning of the Justice of the Peace Court's decision was arbitrary and capricious not only because it did not apply any standard of law to the facts of the case, but also because it found no excusable neglect in Ms. Thomas's conduct. At the time Ms. Thomas signed the Answer to the original Complaint, which contained the information regarding the necessity of hiring counsel or filing a Certificate of Representation, she had only been named individually in the suit, and at that time was not under the requirement of Form 50. Upon the school being added as the defendant in the case, the second notice Ms. Thomas received of the suit contained no information relating to the requirement of counsel or the filing of a Form 50. Ms. Thomas timely made filings in the case, including an Answer and a counter-claim. Additionally, Ms. Thomas appeared for the hearing on August 17, 2012, which demonstrates her diligence in defending the suit. As the Supreme Court of Delaware recently stated, "[A] person can be reasonably prudent yet still be mistaken."

In the Justice of the Peace Court's Order denying Ms. Thomas's Motion to Vacate, the court stated that it discussed the Form 50 issue with Ms. Thomas prior to the trial date. However, the issue did not become part of the pretrial order that was issued to both parties. As the court draws all doubts in favor of the moving party¹⁸, this issue must be drawn in favor of Ms. Thomas. In deference to Delaware judiciary's policy favoring adjudication of cases on the merits as opposed to on procedural grounds¹⁹, the Court finds Ms. Thomas's conduct in this case to be that of a reasonably prudent person under the circumstances (at

¹⁷ Keener, 2013 WL 22087, at *2.

¹⁸ Verizon Delaware, Inc., 2004 WL 838610 at *1; Williams, 576 A.2d at 685.

¹⁹ Battaglia, 379 A.2d at 1135.

the time, litigation in which Ms. Thomas was self-represented), and thus finds the conduct to be excusable neglect.

For the foregoing reasons, the Justice of the Peace Court's denial of Appellant's Motion to Vacate is **REVERSED**, and the case **REMANDED** to the Justice of the Peace Court for proceedings consistent with this opinion.

SO ORDERED this 18th day of February, 2013

The Honorable Alex J. Smalls Chief Judge

cc: The Honorable Kathleen C. Lucas Justice of the Peace 101 Concord Avenue Wilmington, DE 19802