IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

PAOLI SERVICES, INC.,	)	
	)	
Appellant,	)	
	)	
v.	)	C.A. No. N13A-03-017
	)	
HOLY ANGELS ATHLETIC ASSOCIATION,	)	
	)	
Appellee.	)	

Date Submitted: July 22, 2013
Date Decided: October 15, 2013

Upon Consideration of
Appeal From Court of Common Pleas.
AFFIRMED.

On this 15th day of October, 2013, upon consideration of the appeal of Paoli Services, Inc. ("Paoli Services") from the decision of the Court of Common Pleas vacating a default judgment, it appears to the Court that:

1. Paoli Services is a site contracting company that conducts business in Delaware. On March 9, 2010, it entered into a contract with the Holy Angels Athletic Association ("Association"). The Association is the body that organizes athletic programs for Holy Angels School. The contract called for Paoli to deliver and grade topsoil on the school's football field. The contract provided that Paoli

Services would perform the work for the fixed cost of $13,072 and required Dick Vetek, the former President of the Association, to be on site at all times to provide the required elevations.

2. After the work was completed, Paoli Services issued its invoice. The Association did not pay, arguing that the work was not completed in a workmanlike manner. After several attempts to try to resolve the matter, Paoli Services filed a legal action on July 10, 2012 to collect the outstanding balance. The complaint was served on the Association's registered agent Vance Funk, III, Esq. on August 6, 2012. No answer was filed by the Association and on August 30, 2012, Paoli Services requested that the Court enter a default judgment for $11,979.09 plus interest.

3. On November 9, 2012, Paoli Services filed a writ of fieri facias with the Court. After the Sheriff called the Association to schedule a time to inventory its goods, the Association filed a motion for relief from judgment on February 20, 2013. The Court of Common Pleas granted the motion to set aside the default judgment, a decision that Paoli Services now appeals.

4. A decision by the Court of Common Pleas on such a motion is addressed to the sound discretion of the court and will be set aside on appeal only upon a

showing of an abuse of discretion.[1] This Court has a duty to review the sufficiency of the evidence and to test the propriety of the findings below.[2] Findings of the trial court that are supported by the record must be accepted by the reviewing court even if, acting independently, it would have reached a contrary conclusion.[3]

5. Paoli Services' first claim is that the Court of Common Pleas erred in its decision to set aside the judgment because the record below fails to provide specific findings of fact to support the decision.[4] But a review of the decision below requires this Court to consider the entire record to test the propriety of those findings, not just the statements made by the trial court.[5] Based on the entire record, including the oral arguments from both parties and the questions posed by the court, there is sufficient evidence for this Court to determine that the decision was "the product of an orderly and logical deductive process."[6]

6. Paoli Services' second claim is that the Court of Common Pleas erred as a matter of law in granting the motion to vacate. In a motion to set aside a default

---

[1] *Cromwell v. Sheehy Ford Sales*, C.A. 87A-AP-9, 1987 WL 18749, at *1 (Del. Super. Ct. Oct. 15, 1987).

[2] *State v. Cagle*, 332 A.2d 140, 142 (Del. 1974).

[3] *Id.*

[4] In support of its decision, the Court of Common Pleas determined that "the defendant has met Rule 60(b)'s standard of one, excusable neglect, two, presenting a meritorious defense, and three that plaintiff will not suffer prejudice." Appellant's Opening Br., Ex. B, at 13-14.

[5] *Cagle*, 332 A.2d at 142.

[6] *Id.*

judgment, the moving party must establish the following: "(1) excusable neglect in the conduct that allowed the default judgment to be taken; (2) a meritorious defense to the action that would allow [a] different outcome to the litigation if the matter was heard on the merits; and (3) that substantial prejudice will not be suffered by the plaintiff if the motion is granted."[7] Because it is not the policy of the Court to deny a litigant who may have a meritorious defense the opportunity to present his case, the Court will resolve any doubt in favor of the moving party.[8]

7. The first prong of this test requires a showing of excusable neglect, which has been defined as "that neglect which might have been the act of a reasonably prudent person under the circumstances."[9] Based on the present facts, there was sufficient factual evidence to support the trial court's determination of excusable neglect. Because the members of the Association were volunteers, mostly parents of the children participating in the athletic events, they were not normally involved in litigation or familiar with the process. This caused confusion over whether the parish or the diocese would defend the action on behalf of the Association. After the New Castle County Sheriff contacted the Association to

---

[7] *Battaglia v. Wilm. Savings Fund Soc'y*, 379 A.2d 1132, 1135 (Del. 1977); *Servpro Dover v. Walters*, CIV.A.K10A-06-003JTV, 2011 WL 380521, at *2 (Del. Super. Ct. Jan. 28, 2011).

[8] *Williams v. Delcollo Elec., Inc.*, 576 A.2d 683, 685 (Del. Super. Ct. 1989).

[9] *Brannon v. Lamaina*, 622 A.2d 1094, at *1 (Del. 1993) (citing *Cohen v. Brandywine Raceway Ass'n*, 238 A.2d 320, 325 (Del. Super. Ct. 1968)). "Excusable neglect is determined from the surrounding circumstances." *Cohen*, 238 A.2d at 325.

schedule the inventory, the Association learned of the default judgment and immediately filed the Motion for Relief from Judgment.

8. Having found excusable neglect, the Court turns to the issue of whether the moving party has established that a meritorious defense would result in a different outcome to the litigation if the matter was heard on the merits.[10] Because the showing need not be definitive, a mere possibility of a different outcome will suffice.[11] The Association asserts that it had a disagreement related to the quality Paoli Services' work and thus it disputes the underlying debt, claiming substantial damages against Paoli Services. This is enough of a showing to indicate a possibility of a different outcome if the matter was heard on the merits.

9. The final element the moving party must show is Paoli Services will suffer substantial prejudice if the motion is granted.[12] Paoli Services claims that the Court of Common Pleas incorrectly placed the burden on them rather than the Association to demonstrate prejudice. This argument is without merit. The trial court correctly asked both parties to describe the prejudice that may result if the motion was granted. Based on the response from both parties, the court concluded there would be no prejudice as a result. This was not a burden shifting device, but

---

[10] *Battaglia*, 379 A.2d at 1135; *Servpro Dover*, 2011 WL 380521, at *2.

[11] *Williams v. Delcollo Elec., Inc.*, 576 A.2d 683, 687 (Del. Super. Ct. 1989).

[12] *Battaglia*, 379 A.2d at 1135; *Servpro Dover*, 2011 WL 380521, at *2.

rather an opportunity to give the non-moving party a chance to articulate the prejudice that could occur.

10. Moreover, the Court agrees with the court below that no substantial prejudice would result from affirming the motion to vacate. Paoli Services could say only that it will be prejudiced by having to litigate a dispute that it has already won by default. When that is one's best argument, it is unavailing.[13] The Association pointed out that there was no unusual delay in the matter, no loss of witnesses or evidence, and that Paoli Services would simply need to prove its claim at trial. After consideration of Paoli Services' response, the Court finds that no substantial prejudice will result from the granting of the motion to vacate.

11. Based on the foregoing, the Court is satisfied that the Court of Common Pleas applied the correct legal standards and that its decision is supported by substantial evidence. Accordingly, the decision of the Court of Common Pleas to vacate the default judgment must be **AFFIRMED.**

IT IS SO ORDERED.

/s/ Charles E. Butler

Charles E. Butler, Judge

Original to Prothonotary

---

[13] *Old Guard Ins. Co. v. Jimmy's Grille, Inc.*, 860 A.2d 811, at *3 (Del. 2004); *Pinkett v. Valley Forge Ins. Co.*, CIV.A. 89C-AP-92, 1989 WL 135750, at *4 (Del. Super. Ct. Oct. 4, 1989).