

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

DIANNE K. KASOWSKI, )  
)  
Defendant-Below/Appellant, )  
)  
v. ) CPU4-13-000769  
)  
NICKLE REAL ESTATE, INC., )  
)  
Plaintiff-Below/Appellee. )

Submitted: May 8, 2013  
Decided: June 14, 2013

Dianne K. Kasowski  
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Wilmington, DE 19805  
*Pro Se Defendant-Below/Appellant*

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**OPINION**

Dianne K. Kasowski brings this appeal of the Justice of the Peace Court's decision, entered February 19, 2013, denying her motion to vacate default judgment. On March 5, 2013, Ms. Kasowski filed a Notice of Appeal in this Court. On March 22, 2013, a hearing was held and the Court determined that this matter was limited to a review of the Justice of the Peace Court's denial of Ms. Kasowski's motion to vacate default judgment. The parties were ordered to submit briefs on the issue of whether the Justice of the Peace Court abused its discretion in denying the motion.<sup>1</sup>

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<sup>1</sup> This appeal was brought only by Ms. Kasowski. The other Defendant-Below, Nichole M. Burgess, appeared before the Court at the hearing, and was permitted to submit a brief. However, Ms. Burgess did not file a motion to vacate the default judgment against her in the

This is the Court's decision after consideration of the pleadings, oral argument, and written submissions of the parties.

### **FACTS AND PROCEDURAL HISTORY**

Plaintiff-Below/Appellee Nickle Real Estate Inc. ("Nickle") initiated this Landlord/Tenant action in the Justice of the Peace Court on September 17, 2012, case JP13-12-012863. In the Complaint, Nickle alleged that "[t]enant has failed to pay July, August, and September 2012 Rent & Late fee," and sought rental fees and summary possession of the property. On October 8, 2012, service to Defendants, Nichole M. Burgess and Dianne K. Kasowski, was posted at the rental property. No responsive pleadings were filed, and both Defendants failed to appear for trial on November 5, 2012. The court entered a default judgment for Nickle on November 9, 2012, in the amount of \$3,765.87, plus costs of \$41.50, and \$33.33 per diem until vacated.

Nickle then filed a wage attachment, and on January 22, 2013, Ms. Kasowski's wages were attached.<sup>2</sup> On January 31, 2013, Ms. Kasowski filed a motion, which was docketed as a motion to vacate default judgment. In the Motion, Ms. Kasowski alleged that she did not receive notice of the proceedings against her until January 22, 2013, when she received notice from her employer that her wages were attached. Ms. Kasowski claimed that she never lived at the address where service was posted; rather, her daughter was living at the address. Ms. Kasowski's asserted that her only connection with the property was that she co-signed on her daughter's lease. Furthermore, Ms. Kasowski contended that her obligation as co-signor was limited to a term of one year. Ms. Kasowski requested an opportunity to be heard by the court, since she was never notified of any of the proceedings against her.

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Justice of the Peace Court, nor did she file any appeal with this Court; thus, the claims presented in her brief were not considered.

<sup>2</sup> As of this date, the total due on judgment was \$4,685.95.

In an Order dated February 19, 2013, the Justice of the Peace Court responded to the Motion as follows:

The Court is in receipt of Defendant Dianne K. Kasowski's Motion to Vacate Default Judgment of November 9, 2012. This Motion was filed untimely and is therefore denied.

On March 3, 2013, Ms. Kasowski timely filed an appeal to this Court. In her supplemental brief, Ms. Kasowski contends that she is entitled to relief from judgment because she was never notified of the proceeding against her. Ms. Kasowski maintains that she has a viable defense in that she co-signed the lease for the limited duration of one year. Additionally, Ms. Kasowski disputes the amount of damages claimed.

Nickle, by and through counsel, filed an answering brief with this Court on April 26, 2013. It is Nickle's position that the Justice of the Peace did not abuse its discretion in denying the Motion to Vacate Default Judgment because no discretion was applied. Nickle argues that the Motion was untimely pursuant to 10 Del. C. § 9538; therefore, the court below was not required to consider the elements of a Rule 60(b) motion to vacate, without which no discretion was applied. Nickle further argues that even if there existed a basis to ignore the procedural time limits imposed, Ms. Kasowski would not prevail on the motion because "[s]he has no conceivable meritorious defense."

### **STANDARD OF REVIEW**

An appeal of the denial a motion to vacate default judgment is limited to review of the decision denying the motion.<sup>3</sup> The matter is not before this Court for a trial *de novo*; rather, the Court's review is limited to whether the Justice of the Peace Court abused its discretion in its order denying relief.<sup>4</sup> The abuse of discretion standard is set forth in *Pitts v. White*:

The essence of judicial discretion is the existence of judgment by conscience and reason, as opposed to capricious arbitrary action and where a Court has not exceeded

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<sup>3</sup> *Ney v. Polite*, 399 A.2d 527, 529 (Del. 1979).

<sup>4</sup> *Id.*

the bounds of reason in view of the circumstances, and has not so ignored recognized rules of law of 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 have reasonably reached the conclusion of which complaint is made.<sup>5</sup>

Under this standard, the inquiry is whether the lower court's decision was "the product of logic, based on facts and reasonable deductions to be drawn therefrom."<sup>6</sup> "Only judgments that are manifestly unreasonable, capricious, or not based on recognized rules of law or practice are considered an abuse of discretion."<sup>7</sup>

### DISCUSSION

A party may seek relief from judgment under Justice of the Peace Civil Rule 60(b) which states, in relevant 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; (2) newly discovered evidence which by due diligence could not have been discovered at the time of the trial; (3) fraud, misrepresentation or other misconduct of an adverse party . . . or (6) any other reason justifying relief from the operation of the judgment.

It is well established that Delaware courts favor adjudication of cases on the merits.<sup>8</sup> In accordance with this preference, Rule 60(b) is liberally construed.<sup>9</sup> "Delaware courts receive [motions to vacate] with favor because they promote Delaware's strong judicial policy of deciding

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<sup>5</sup> 109 A.2d, 786, 788 (Del. Super. 1954).

<sup>6</sup> *Hurd v. Smith*, 2009 WL 1610516, at \*1 (Del. Com. Pl. June 10, 2009).

<sup>7</sup> *Gibson v. Car Zone*, 2010 WL 3958776, at \*1 (Del. Com. Pl. Aug. 3, 2010).

<sup>8</sup> *Keener v. Isken*, 58 A.3d 407, 409 (Del. 2013); *Keystone Fuel Oil Co. v. Del-Way Petroleum*, 364 A.2d 826, 828 (Del. Super. 1976) ("trial on the merits is considered superior to a default judgment").

<sup>9</sup> *Battaglia v. Wilmington Sav. Fund Soc.*, 379 A.2d 1132, at 1135 (Del. 1977).

cases on the merits and giving parties to litigation their day in court. In furtherance of this policy, the Court will resolve any doubts raised by the motion in favor of the moving party.”<sup>10</sup>

As both a matter of judicial ethics and as a matter of law, a judge must state his reasons for a decision.<sup>11</sup> The Justice of the Peace Court was tasked with determining whether Ms. Kasowski established the elements required to prevail on a motion for default judgment. The Justice of the Peace Court abused its discretion by denying Ms. Kasowski’s motion on procedural grounds without any reasoning or application of law to support its decision. The magistrate determined that the motion as “untimely filed,” but offers no insight into what rule or statute it applied in reaching that decision.

If Ms. Kasowski’s motion were considered on the merits, consistent with Delaware’s stated policy, it is likely the outcome would have been different. When considering a motion to vacate a default judgment under Rule 60(b), the court must examine three elements:

- (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 its merits; and
- (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.<sup>12</sup>

For purposes of a Rule 60(b) motion, excusable neglect is “neglect which might have been the act of a reasonably prudent person under the circumstances.”<sup>13</sup> “A party must also ‘act without

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<sup>10</sup> *Verizon Delaware, Inc. v. Baldwin Line Const. Co., Inc.*, 2004 WL 838610, at \*1 (Del. Super. Apr. 13, 2004).

<sup>11</sup> *B.E.T., Inc. v. Board of Adjustment of Sussex Count*, 499 A.2d 811, 811 (Del. 1985) (“[i]t is established law in this State that a judge must state the reasons for his decision”); *Cannon v. Miller*, 412 A.2d 946, 947 (Del. 1980) (“[a] judge of our State must understand that the legal requirement of supplying reasons is a matter of judicial ethics as well as a matter of law”); *Zmierski v. State Farm Mut. Auto. Ins. Co.*, 1987 WL 17182, at \*2 (Del. Super. Sept. 15, 1987) (“[t]he legal requirement of supplying reasons is a matter of judicial ethics as well as a matter of law”).

<sup>12</sup> *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.*, 2004 WL 838610, at \*1 (Del. Super. Apr. 13, 2004).

<sup>13</sup> *Cohen v. Brandywine Raceway Assoc.*, 238 A.2d 320, 325 (Del. Super. 1968).

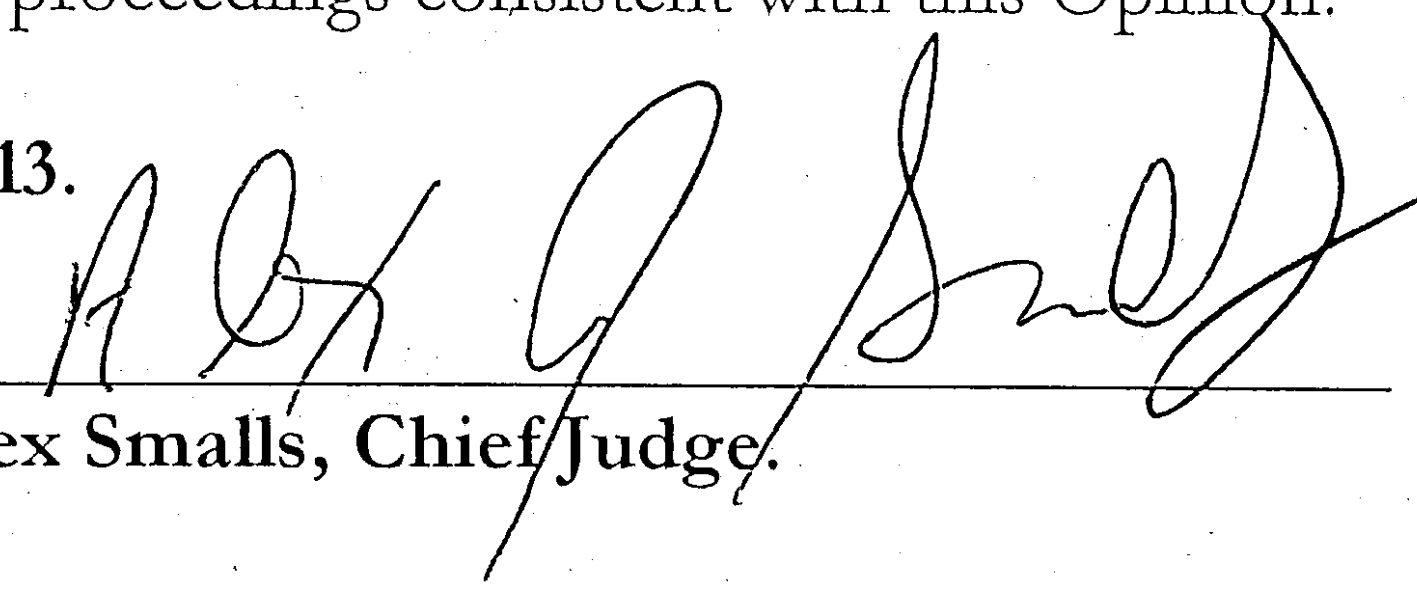
unreasonable delay (after knowing that his action had been dismissed) in making his motion [for relief].”<sup>14</sup>

From the record, it appears that Ms. Kasowski’s position that she did not receive service has merit. In its reply brief, Nickle maintains that there is “nothing in the record that would lead this Court to conclude that service was somehow improper or ineffective.” To the contrary, Nickle’s Complaint indicates that there was only one tenant living in the rental unit where service was made. In the Complaint, Nickle alleges “tenant has failed to pay.” This indicates that Nickle was aware that there was only one tenant at the property, which is where service was rendered. Furthermore, Ms. Kasowski contends that she was only a co-signor to the lease. Although the lease agreement is not available as part of the record, and therefore Ms. Kasowski’s status as a tenant or merely a co-signor cannot be confirmed, all inferences should be drawn in favor of the moving party.<sup>15</sup> It is also noteworthy that Ms. Kasowski filed the motion to vacate within 10 days of her wages being attached, which is when she claims to have first learned of the legal proceedings.

#### Conclusion

The Justice of the Peace Court’s denial of Ms. Kasowski’s Motion to Vacate is **REVERSED** and **REMANDED** to the Justice of the Peace Court for proceedings consistent with this Opinion.

**IT IS SO ORDERED** this 14<sup>th</sup> day of June, 2013.

  
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Alex Smalls, Chief Judge.

cc: Justice of the Peace Court #13

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<sup>14</sup> *Hardy v. Harvell*, 930 A.2d 928, 2007 WL 1933158, at \*2 (Del. July 3, 2007) (TABLE) (quoting *Schremp v. Marvel*, 405 A.2d 119, 120 (Del.1979)).

<sup>15</sup> *Verizon Delaware, Inc. v. Baldwin Line Const. Co., Inc.*, 2004 WL 838610, at \*1 (Del. Super. Apr. 13, 2004).