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

LINDA PAYNE,)
Defendant-Below/Appellant,)
v.) C.A. No.: CPU4-12-003299
DAVENPORT SERVICES, INC.,)
Plaintiff-Below/Appellee.)

Submitted: August 2, 2013 Decided: September 4, 2013

William P. Brady, Esquire Woloshin, Lynch, Natalie, & Gagne 3200 Concord Pike P.O. Box 7329 Wilmington, DE 19803 Attorney for Defendant-Below/Appellant Steven Goldstein, Esquire 3608 Davenport Street, NW Washington, DC 20008 Attorney for Plaintiff-Below/Appellee

OPINION ON APPELLEE'S MOTION TO AFFIRM

This matter comes on appeal from the Justice of the Peace Court's order, entered August 9, 2012, denying Defendant-Below/Appellant Linda Payne's motion to vacate default judgment. As such, this matter is limited to a review of whether the Justice of the Peace Court abused its discretion in denying Ms. Payne's motion. Ms. Payne filed a Notice of Appeal in this Court on August 24, 2012. A conference was held on January 9, 2013, and the parties were ordered to submit briefs in support of their respective positions. On May 21, 2013, Plaintiff-Below/Appellee Davenport Services, Inc. ("Davenport Services") filed a Motion to Affirm the Justice of the Peace Court's August 9, 2012 decision. A hearing on the Motion was held on August 2, 2013 and at the conclusion thereof, the Court reserved

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

FACTS AND PROCEDURAL HISTORY

Davenport Services initiated this debt action on August 4, 2011, in the Justice of the Peace Court, case J13-12-012863. In the Complaint, Davenport Services alleged: Ms. Payne failed to pay rent owed pursuant to a lease agreement between the parties; Ms. Payne failed to pay her water bill; Ms. Payne caused damage to the property, and; a fine was issued by New Castle County for failing to keep the property clean. On August 25, 2013, service was perfected via certified mail; a signed delivery receipt was docketed on August 29, 2013. On November 3, 2011, Davenport Services filed for default judgment in the amount of \$10,700.00 plus costs. On March 7, 2012, the Justice of the Peace Court entered a default judgment in the amount of \$10,740.00 in favor of Davenport Services, pursuant to *Justice of the Peace Civil Rule* 55.1

After default judgment was entered, Davenport Services filed a wage attachment. Ms. Payne's wages were attached on April 19, 2012. On June 1, 2012, Ms. Payne, acting *pro se*, filed a motion for a new trial. On June 4, 2012, the Justice of the Peace Court entered an order denying the motion for a new trial, and advising Ms. Payne that the court would consider a motion to vacate judgment. On June 21, 2012, Ms. Payne, by and through counsel, filed a motion to vacate judgment. A hearing on the motion was held on July 25, 2012. On August 9, 2012, the Justice of the Peace Court entered an order denying the motion to vacate judgment.

costs of \$40.00.

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The total judgment figure represents the sum of the judgment amount of \$10,700.00 plus court

On August 24, 2013, Ms. Payne timely filed an appeal to this Court. Ms. Payne asserts that the Justice of the Peace Court abused its discretion in denying her motion to vacate judgment, alleging she is entitled to relief under *Justice of the Peace Civil Rule* 60(b).

It is Ms. Payne's position that, under the circumstances, she acted as a reasonably prudent person. According to Ms. Payne, she never received the Summons and Complaint, nor did she receive notice of the default judgment entered against her; rather, she only became aware of these legal proceedings when her wages were attached. Furthermore, Ms. Payne argues, even if she did receive service of the summons and complaint, she was diagnosed with cancer and was preoccupied with chemotherapy treatment. Ms. Payne asserts that she has a meritorious defense in that she did not sign the lease, which is the basis for the claim. Ms. Payne also contends that Davenport Services will not be substantially prejudiced if the default judgment is set aside. Finally, Ms. Payne argues that the Justice of the Peace Court abused its discretion by making a determination of liability at the motion hearing, rather than hearing the merits of the case.

It is Davenport Services' position that the present appeal is without merit because there was no abuse of discretion by the court below. Davenport Services argues that the Justice of the Peace Court determined that Ms. Payne received the Court's notices, and that her medical treatment was limited and would not prevent her from responding to the Court's notices. Davenport Services further asserts that the court below considered the evidence, applied the appropriate legal standard, and considered the merits of Ms. Payne's defenses in reaching its decision. Thus, Davenport Services concludes, the court below did not abuse its discretion in denying Ms. Payne's motion to vacate judgment.

STANDARD OF REVIEW

Review of a denial of a motion to vacate default judgment requires the Court to analyze such under the abuse of discretion standard.² A motion to affirm is governed by *Court of Common Pleas Civil Rule* 72.2(b)(3), which provides that the Court of Common Pleas may affirm the Justice of the Peace Court's decision where "the issue on appeal is one of judicial . . . discretion, and clearly there was no abuse of discretion." The essence of judicial discretion is the exercise of judgment by conscience and reason as opposed to capricious and arbitrary action. Where the Court has not exceeded the bounds of reason in view of the circumstances and has not ignored recognized rules of law or practice so as to produce injustice, its legal discretion has not been abused.⁴ This Court is not tasked with determining whether it would have reached a different decision; rather, the issue before this Court is whether the lower court's decision "[was] the product of logic, based upon the facts and reasonable deductions to be drawn therefrom." This analysis must be conducted in light of Delaware's strong public policy which favors resolution of disputes on the merits as opposed to judgment by default.⁶

DISCUSSION

A. The Justice of the Peace Court did not abuse its discretion in determining that Ms. Payne failed to meet the requirements of Rule 60(b).

² Court of Common Pleas Civil Rule 72.2(b)(3).

 $^{^{3}}$ Id

⁴ Pitts v. White, Del. Supr., 109 A 2d 786 (1954)

⁵*Hurd v. Smith*, 2009 WL 1610516, *1 (Del. Com. Pl. June 10, 2009).

⁶ Diane Schrader – Van Newkirk v. Danbe, 45 A3rd 149, 2012 WL 1952297 (Del. Supr.)

Under Justice of the Peace Civil Rule 60(b)(1), a party may be relieved from judgment where there was mistake, inadvertence, surprise, or excusable neglect.⁷ To prevail on a Rule 60(b) motion, the movant must establish:

"(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."8

The order entered by the Justice of the Peace Court denying Ms. Payne's motion to vacate default judgment set forth the applicable law, and the Court stated the following in reaching its decision:

At the hearing, Defendant denied the signature was hers which appeared on the signed green card, accepting Court notice of the lawsuit. After that, a notice of default judgment was sent and the Court notes Defendant did not respond to the Court. Finally, her wages were attached and she responded to the Court.

. . . .

Ms Payne's signature appeared on the lease which prompted this litigation; she averred she was ill and undergoing chemotherapy in a Philadelphia hospital. However, she indicated she drove[r] herself back and forth and was never hospitalized for more than a few days at a time. She believes this debt should fall to the granddaughters for whom she leased the rental unit; in fact, she avers they signed a lease but could not produce a fully executed copy.

The Court finds Defendant's testimony to be less than credible. Plaintiff's recourse is to her, not her granddaughters; they may indeed owe her the money. That, however, is another case filed another day.

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⁷ Justice of the Peace Civil Rule 60(b)(1).

⁸ Verizon Delaware, Inc. v. Baldwin Line Constr. Co., 2004 WL 838610, at *1 (Del.Super.)).

In reaching these conclusions, the Court relied upon the *Justice of the Peace Civil Rule 60* and applied the proper analysis. Further, the Court referred to the policy which favors resolution of disputes on the merits. Then the Court concluded:

However, this consideration must be balanced in every case with the interest of preserving the finality of judgments and insuring there is end to litigation.

Ms. Payne contends that she demonstrated reasonable neglect, because her actions were clearly those of a reasonably prudent person. According to Ms. Payne, she testified at the Justice of the Peace Court hearing that she did not receive the summons and complaint, nor did she receive notice from the court of the default judgment. Ms. Payne maintains that even if she did receive the complaint, she was preoccupied with chemotherapy treatment for breast cancer. Thus, Ms. Payne argues, her motion to vacate should have been granted since her failure to respond was the result of excusable neglect.

In support of this argument, Ms. Payne relies on *Battaglia v. Wilmington Savings Fund Society.*⁹ Ms. Payne indicates her case is comparable to *Battaglia*, where the Delaware Supreme Court found no abuse of discretion by the Superior Court's holding that the conduct of the Defendant constitutes inadvertence or excusable neglect. In *Battaglia*, the defendant, a bank, acknowledged receipt of the complaint, but inadvertently misplaced it, and ultimately the complaint "slipped' his mind." However, *Battaglia* is inapposite to the present case. The Supreme Court's conclusion that there was no abuse of discretion was not based on a finding that the defendant's conduct was excusable neglect within the meaning of

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⁹ Battaglia v. Wilmington Sav. Fund Soc., 379 A.2d 1132 (1977).

¹⁰ *Id.* at 1135.

Rule 60.¹¹ Rather, the Court found that there was no abuse of discretion after consideration of additional facts in the records, including disparities between the amount of damages sought in the complaint and the amount identified in the plaintiff's subsequent affidavit.¹²

The Justice of the Peace found that Ms. Payne's testimony to be less than credible, and it found her failure to respond to the complaint did not constitute excusable neglect. The Justice of the Peace specifically held that Ms. Payne failed to respond to both the complaint and the subsequent court mailing notifying her of the default judgment, while she was able to independently commute for medical treatment. There is nothing in the record to indicate that such a finding was arbitrary or capricious. The Justice of the Peace Court acted within its discretion in finding that Ms. Payne's did not act as a reasonably prudent person in failing to respond to the complaint.

B. Ms. Payne's claims of a meritorious defense and lack of substantial prejudice to Davenport Services.

Ms. Payne asserts that she presented a meritorious defense because she did not sign the lease agreement upon which this litigation is based. Davenport Services, on the other hand, argues that Ms. Payne testified in the Justice of the Peace Court hearing that she did sign a lease to the property, but did not sign a second lease. The Justice of the Peace Court specifically found that Ms. Payne's signature did appear on the lease. Additionally, the Court refers to Ms. Payne's position that the debt should fall to the granddaughters for whom she

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¹¹ *Id.* ("assuming that the neglect to which the Bank admits is not excusable within the meaning of the Rule, that does not end the matter because the record contains additional facts which must be considered as we review the Court's exercise of discretion").

¹² *Id.* at 1136.

leased the unit. This holding Court indicates that Ms. Payne failed to put forth a meritorious

defense to Plaintiff's claim.

C. The Justice of the Peace Court did not abuse its discretion by making a

determination of liability on a motion hearing.

At the August 2, 2013 hearing in this Court, counsel for Ms. Payne argued that the

Justice of the Peace abused its discretion by making a final determination on the issue of

liability in a motion hearing rather than having a factual hearing to decide the case on the

merits. The Justice of the Peace court was called upon to address the merits of Ms. Payne's

motion to vacate judgment. There is nothing in the record or the written Order that

suggests that the Justice of the Peace Court abused its discretion in assessing the merits of

Ms. Payne's motion to vacate judgment and counsel for Ms. Payne offered nothing to

support this vague contention.

CONCLUSION

The Justice of the Peace Court did not abuse its discretion in its decision denying Ms.

Payne's motion to vacate judgment. Accordingly, Davenport Services' Motion to Affirm is

hereby **GRANTED**, and the decision of the Justice of the Peace Court is **AFFIRMED**.

IT IS SO ORDERED this 4th day of September, 2013.

Alex Smalls, Chief Judge.

cc: Justice of the Peace Court #13

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