

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

GOVERNMENT EMPLOYEES)	
INSURANCE COMPANY,)	
AS SUBROGEE OF)	
KIMBERLY TAYLOR-GREEN,)	
and)	
KIMBERLY TAYLOR-GREEN,)	
INDIVIDUALLY)	
)	
Plaintiff,)	C.A. No. CPU408-03-271
)	
v.)	
)	
STACEY L. EDWARDS,)	
and)	
JEFFREY D. EDWARDS)	
)	
Defendants.)	

Submitted: April 16, 2010
Decided: April 30, 2010

MEMORANDUM OPINION AND ORDER

Sandra F. Clark, Esquire, 919 Market Street, Suite 460, Wilmington, DE 19801, *Attorney for Plaintiff*

Stacey L. Edwards and Jeffrey D. Edwards, 307 S. Gerald Drive, Newark, DE 19713, *Self-represented Defendants*

Stacey L. Edwards and Jeffrey D. Edwards, 46 Indiana Road, Wilmington, DE 19808, *Self-represented Defendants*

ROCANELLI, J.

Plaintiffs Government Employees Insurance Company (“GEICO”) and Kimberly Taylor-Green filed a third Motion for Default Judgment that was heard by the Court on April 16, 2010. Plaintiffs argued that Defendants’ failure to respond to discovery had prejudiced Plaintiffs’ prosecution of the case, as counsel for Plaintiffs was unable to properly prepare for trial and to further investigate the matter. The Court reserved decision. This is the Court’s decision and Order.

I. PROCEDURAL POSTURE

Plaintiffs GEICO and Kimberly Taylor-Green filed this action against Defendants Stacey L. Edwards and Jeffrey D. Edwards to recover money damages for a car accident that allegedly occurred on August 29, 2009. The complaint, filed on March 14, 2008, demands judgment in the amount of \$3,543.57, minus salvage costs of \$401.50, in addition to Taylor-Green’s \$100.00 deductible, with pre-judgment and post-judgment interest plus costs.

Defendants filed an Answer to the Complaint on April 21, 2008. The Complaint and Answer state Defendants’ address as 307 S. Gerald Drive, Newark, DE 19713 (“Gerald Drive Address”). On May 8, 2008, counsel for GEICO mailed *Interrogatories* and *Request for Production* directed to both Stacey Edwards and Jeffrey Edwards at the Gerald Drive Address. On May

28, 2008, GEICO once again sent *Interrogatories* and *Request for Production* to Stacey Edwards.

Having received no discovery responses from either Defendant, Plaintiffs filed a Motion to Compel Defendants to Answer Discovery on July 1, 2009. On August 7, 2009, the Court entered an Order directing Plaintiffs to reserve discovery and to contact Defendants by telephone. Court of Common Pleas Civil Rule 37(e)(1) requires certification by the moving party that an effort was made to reach agreement on the subject of the motion. Plaintiffs made no such certification and had not tried to reach agreement with Defendants on the subject of Plaintiffs' Motion.

That same day, according to Plaintiffs, paralegal Elizabeth Winnington, attempted to contact Defendants three (3) times by telephone and each time received a recording stating, "unable to leave a message at this time, call back later." On August 10, 2009, Winnington made another attempt to contact Defendants by telephone and was able to leave a voice mail message. Thereafter, on August 11, 2009, Plaintiffs sent copies of *Interrogatories* and *Request for Production* to Defendants, again at the Gerald Drive Address.

Plaintiffs did not receive responses to their discovery requests from Defendants. On October 1, 2010, Plaintiffs filed a Motion for Default

Judgment (“First Default Motion”) based on Defendants’ failure to respond to discovery. The First Default Motion was scheduled to be heard on December 11, 2009. Meanwhile, on November 24, 2009, Defendants failed to attend a pre-trial conference. Trial was scheduled for March 16, 2010.

On December 11, 2009, counsel withdrew the First Default Motion. No reason was stated. Five days later, on December 16, 2009, counsel filed a second Motion for Default Judgment (“Second Default Motion”), which was scheduled to be heard on February 5, 2010. On February 5, 2010, the Court considered the Second Default Motion. Plaintiffs’ counsel informed the Court that it had come to counsel’s attention that the scheduling Order sent to Defendants by the Court had been returned as undeliverable. Counsel moved to withdraw the Second Default Motion and requested that the trial date be rescheduled so that Defendants could be properly notified. Counsel also indicated that counsel would provide an updated address for Defendants to the Court.

Having considered the Second Default Motion, the Court entered an Order withdrawing the Plaintiffs’ Second Default Motion and rescheduling trial for a later date. Thereafter, trial was scheduled for May 10, 2010. However, following a written request by Plaintiffs’ counsel citing a scheduling conflict, the Court rescheduled the trial to June 15, 2010.

Plaintiffs' third Motion for Default Judgment ("Third Default Motion") was filed on February 26, 2010 and also identifies Defendants' address as 307 S. Gerald Drive, Newark, DE 19713 in the text of the Motion. However, the Certificate of Service filed by Plaintiffs in conjunction with the Third Default Motion indicates that a copy of the Motion was mailed to 46 Indiana Road, Wilmington, DE, which is presumably Defendants' current address. The Court notes that the Certificate of Service for the Third Default Motion does not include a zip code. Therefore, Defendants may not have received notice of the Third Default Motion.

II. ANALYSIS

Rule 37(a) of the Court of Common Pleas Civil Rules provides that a party may apply for an order compelling discovery "upon *reasonable notice* to other parties and all persons affected thereby." (Emphasis added). Where a party "fails to obey an order to provide or permit discovery," including an order under Rule 37(a), "the Court may make such orders in regard to the failure as are just," including an order "rendering a judgment by default against the disobedient party." CCP Civ. R. 37(b)(2)(C). As noted previously, Court of Common Pleas Civil Rule 37(e)(1) requires

certification by the moving party that an effort was made to reach agreement on the subject of the motion.

The Court is not confident that Defendants have received reasonable notice of the trial and Plaintiffs' Third Default Motion. It is also not clear whether Defendants have been properly served with Plaintiffs' discovery requests. A review of the docket entries in this matter indicates that Defendants' address remains unchanged in the Court's eFlex system and continues to be listed as 307 S. Gerald Drive, Newark, DE 19713. The Court's February 5, 2010 Order mailed to Defendants was returned unclaimed on February 26, 2010, presumably because the Gerald Drive Address is wrong. The Court also notes that all notices generated by the Court have been mailed to the Gerald Drive Address. Finally, certification pursuant to Rule 37(e) was not included with Plaintiffs' Third Default Motion.

III. ORDER

1. The Court hereby directs Plaintiffs GEICO and Taylor-Green to re-serve discovery requests to Defendants at 46 Indiana Road, Wilmington, DE and to include an accurate zip code in this and future mailings.

2. Defendants are directed to notify the Court in writing of their correct mailing address with a copy to Plaintiffs' counsel, and to notify the

Court and Plaintiffs' counsel in writing of any change in their mailing address while this case is pending.

3. The Clerk's Office is directed to update Defendants' address in the filing system so that all future notices are sent to Defendants' proper address.

4. Plaintiffs are directed to comply with Court of Common Pleas Civil Rule 37(e)(1) which requires certification by a moving party filing a motion pursuant to Rule 26(c), Rule 26(d) or Rule 37.

5. Plaintiffs' Motion for Default Judgment is hereby DENIED.

6. Trial, previously scheduled for June 15, 2010, is hereby rescheduled to July 1, 2010.

IT IS SO ORDERED this 30th day of April 2010.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli